(31,233)

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1925**

## No. 510

D. E. WEAVER, CHIEF OF THE BUREAU OF INSPECTION IN PITTSBURGH OF THE DEPARTMENT OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, APPELLANT,

*vs.*

THE PALMER BROTHERS COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

No. 1035. In Equity

THE PALMER BROTHERS COMPANY

vs.

D. E. WEAVER, Chief of Bureau of Inspection in Pittsburgh, of the Dept. of Labor & Industry of Penna.

CLERK'S CERTIFICATE

WESTERN DISTRICT OF PENNSYLVANIA, ss:

[Seal of U. S. District Court W. D. Pennsylvania.]

I, J. Wood Clark, Clerk of the District Court of the United States, for the Western District of Pennsylvania, do hereby certify that the annexed and foregoing pages contain a true and correct copy of the transcript of record on appeal in the above-entitled case, so full and entire as the same remains of record and on file in my office, in the City of Pittsburgh, in said District.

In testimony whereof, I have hereunto signed my name and affixed the seal of the said Court, at Pittsburgh, this 25th day of May, A. D. 1925.

J. Wood Clark, Clerk.

WESTERN DISTRICT OF PENNSYLVANIA, ss:

I, Robert M. Gibson, District Judge of the United States, for said District, do hereby certify that J. Wood Clark, above named, was, at the time of making the above certificate, and is now, Clerk of the said Court, and that the said certificate made by him is in due form of law.

Robert M. Gibson, U. S. District Judge.

Pittsburgh, May 25th, 1925.

WESTERN DISTRICT OF PENNSYLVANIA, ss:

I, J. Wood Clark, Clerk of the District Court of the United States, for the Western District of Pennsylvania, do certify that the Honorable Robert M. Gibson, by whom the foregoing attestation was made, and who has thereunto subscribed his name, was, at the time of making thereof, and still is, Judge of the District Court of the United States in and for said District, duly commissioned and qualified: to all whose acts, as such, full faith and credit are and ought to be given, as well in the Courts of Judicature as elsewhere.

In testimony wherefore, I have hereunto signed my name and affixed the seal of the said Court, at Pittsburgh, in said District, this 25th day of May, A. D. 1925.

J. Wood Clark, Clerk. (Seal of U. S. District Court W. D. Pennsylvania.)

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[fol. 2] IN UNITED STATES DISTRICT COURT

DOCKET ENTRIES

THE PALMER BROTHERS COMPANY, a Corporation,

vs.

D. E. WEAVER, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania

Attorneys: Reed, Smith, Shaw & McClay, for Plaintiff; E. Lowry Humes, for Defendant.

| | | |
|---|---|---|
| Jan. | 29, 1924. | Bill of Complaint filed. |
| " | " " | Subpœna issued. |
| " | " " | Application of Plaintiff for a hearing in accordance with section 266 of the Judicial Code filed and order ent. granting same fixing date for hearing on Feb. 2nd, 1924. |
| " | 30, " | Subpœna returned served together with Bill of Complaint and Notice of application for hearing on D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Dept. of Labor and Industry of the Commonwealth of Pennsylvania, by handing to and leaving a true and attested copy thereof with D. E. Weaver at Pittsburgh, Jan. 29, 1924. |
| Mar. | 7, " | Notes of Testimony filed. |
| " | 20, " | Opinion filed and entered together with order denying motion for an interlocutory injunction. |
| Apr. | 11, " | Petition for appeal to the Supreme Court of the United States and order allowing same filed & ent. |
| " | " " | Assignments of error filed. |
| " | " " | Citation awarded. Service on citation. |
| " | 15, " | Bond on appeal approved and filed. |
| May | 17, 1924. | Præcipe for transcript of record on appeal, filed. |
| Jan. | 19, 1925. | Answer filed. |
| Feb. | 2, " | Mandate of U. S. Supreme Court affirming the decree of this Court, received and filed. |
| " | 16, " | Hearing on Bill, answer and Proofs, ent. |
| " | 17, " | Hearing proceeds, ent. |
| " | " " | Witnesses sworn for Plff. |
| " | 18, " | Hearing concluded, C. A. V. |
| " | " " | Memoranda of trial filed. |
| " | 25, " | Transcript of Testimony filed. |

Mar. 9, 1925. Opinion filed and entered.
" 14, " Defendant's Motion for re-argument & order granting same and fixing April 2, 1925 for such re-argument.
Apr. 21, " Opinion on re-argument filed & entered.
" 23, " Decree filed and entered holding that Act of Assembly of Penn'a. approved June 14, 1923, relating to mattresses etc., violates the constitutional rights of plaintiff, and, in certain aspects, is unconstitutional and void; that the Defendant be enjoined and restrained etc.; exception noted to Defendant.
May 5, " Petition of Defendant for appeal to the U. S. Supreme Court and order allowing same filed and entered; bond required in sum of $500.
" " " Assignments of Error filed.

[fol. 3]

May 5, 1925. Paper waiving Citation and signed by Reed, Smith, Shaw & McClay, and Frank L. McGuire, Attorneys for Appellee, filed.
" " " Motion and order filed and entered directing that record on appeal shall contain testimony of witnesses in exact words of the witnesses.
" 6, " Bond on appeal approved and filed.
" " " Motion to suspend and modify injunction pending appeal, filed.
" 8, " Præcipe for transcript of record on appeal filed.
" 13, " Order modifying decree and suspending injunction pending appeal, filed and entered.

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[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed Jan. 29, 1924

To the Honorable the Judges of the District Court of the United States for the Western District of Pennsylvania:

The plaintiff, The Palmer Brothers Company, a corporation, brings this Bill of Complaint against the above named defendant and respectfully represents and alleges as follows:

(1) The plaintiff, The Palmer Brothers Company, is a corporation organized and existing under the laws of the State of Connecticut. The plaintiff is a citizen of the State of Connecticut, and its principal place of business is located in the City of New London, in the State of Connecticut.

(2) The defendant, D. E. Weaver, is a citizen of the State of Pennsylvania, residing at Pittsburgh, in the Western District of the

State of Pennsylvania. By due appointment, he is a chief of the Bureau of Inspection of the Department of Labor and Industry of the Commonwealth of Pennsylvania, and is in charge of the branch office of the Department of Labor and Industry in the City of Pittsburgh, in the Western District of Pennsylvania.

[fol. 5] (3) This is a suit of a civil nature, arising out of the Constitution of the United States. The parties are of diverse citizenship. The matter in controversy exceeds the sum of Three Thousand ($3,000.) Dollars in value, exclusive of interest and costs.

(4) The plaintiff is now, and for many years past has been, engaged in the manufacture of bed quilts or comfortables. For over forty years it has manufactured comfortables in large mills located at New London, Palmertown and Fitchville, all in the State of Connecticut, and has shipped large quantities of them from Connecticut to Pennsylvania and elsewhere, for sale. Its business with customers in the State of Pennsylvania is wholly interstate commerce. The comfortables manufactured by the plaintiff and shipped to Pennsylvania for sale, are filled with cotton, wool, down, shoddy (new and second-hand) and other soft materials, garnetted or lapped, and are covered with cotton or silk covers.

(5) The General Assembly of the Commonwealth of Pennsylvania, at the Session of 1923, passed Act #314, which was approved by the Governor on the fourteenth day of June 1923. It is found in the 1923 Pamphlet Laws of Pennsylvania at page 802, and is entitled "An Act relating to mattresses, pillows, bolsters, feather-beds, comfortables, cushions and upholstered furniture, regulating the making, re-making, renovating, sterilizing, disinfecting, selling, leasing, delivering and consigning thereof, and the possession thereof with intent to sell, lease, deliver or consign." The Act became effective January 1, 1924. A copy of the Act is hereto attached as Exhibit "A" and is hereby made a part of this Bill of Complaint as fully as if herein set out. A copy of the rules promulgated by the Department of Labor and Industry of the Commonwealth of Pennsylvania in the administration of Act 314 of 1923, is hereto attached as Exhibit "B" and is hereby made a part of this [fol. 6] Bill of Complaint as fully as if herein set out.

(6) Act 314 of 1923 of the General Assembly of Pennsylvania provides in Section 2, that no person shall employ or use in the making of any comfortables "(a) any material known as 'shoddy' or any fabric or material from which 'shoddy' is constructed; (b) any second-hand material, unless since last used, such second-hand material has been thoroughly sterilized and disinfected by reasonable process approved by the Commission of Labor and Industry." Shoddy is defined in Section 1, as "any material which has been spun into yarn, knit and woven into fabric, and has subseqently been cut up, torn up, broken up and ground up." The word "second-hand" is defined as "any material or article of which prior use has been made."

Section 3 provides that the process used for sterilizing second-hand material shall be submitted to the Commission of Labor and Industry for approval, and that a permit of approval shall be posted in the place of business on penalty of forfeiture.

Section 4 provides that all places where comfortables, etc., are made, or where second-hand material is sterilized, shall be subject to inspection by the Department of Labor and Industry.

Section 6 provides that every bed comfortable covered by the Act, other than feather or down filled, shall bear, securely attached thereto, and visible on the outside covering, a tag to be procured from the Department of Labor and Industry, containing a statement showing (a) whether the filling material is wholly new or second-hand or partly second-hand; (b) the name and address of maker and vendor; (c) the word "second-hand" upon any article of which prior [fol. 7] use has been made; and (d) the number of the permit issued for sterilizing and disinfecting.

Section 7 provides that the required tags shall be not less than a certain size, and that the official statement required by section six, shall be made in a prescribed form and shall include a statement that the article was made in compliance with the Act. It further provides against counterfeiting or imitating of tags; and provides that the "word 'felt' or words of like import, if any other than garnetted materials are used in filling" shall not be used on tags. The removal, defacing and alteration of statements on tags are declared unlawful. The Act, however, does not define the word "garnetted."

Section 8 provides that the required tags shall be obtained exclusively from the Commissioner of Labor and Industry in quantities of not less than one thousand, at a cost of Ten Dollars ($10.00) for each one thousand. The Commissioner prints the name and address of the maker on the tag, but the rest of the official statement must be placed on the tags by the maker or vendor, both of whom are held responsible. The Act applies the word "fee" to money collected under the Act.

Section 10 provides that any person violating any of the provisions of the Act shall be guilty of a misdemeanor.

[fol. 8] (7) The plaintiff is advised by counsel, and therefore avers that Act 314 of 1923 of the General Assembly of Pennsylvania, is unconstitutional and void because of the provisions mentioned in the foregoing paragraph, in that it violates the commerce clause (Article I, section 8, clause 3,) and the Fourteenth Amendment of the Constitution of the United States; and in that it violates the following provisions of the Constitution of Pennsylvania: Article I, section 1, (declaring the inherent right of men to enjoy liberty and to acquire, possess, and protect property); Article I, section 9, (prohibiting the deprivation of liberty or property unless by law of the land); and Article III, section 7 (prohibiting the passage of special laws regulating trade or manufacturing.)

(8) The plaintiff uses in the manufacture of a considerable proportion of the bed comfortables produced by it a material used in the trade for many years and known as shoddy. The shoddy which

the plaintiff uses in making these comfortables is manufactured by the plaintiff from material which has been spun into yarn, knit and woven into fabric, and has subsequently been cut up, torn up, broken up and ground up. The shoddy used is of two kinds, new shoddy and secondhand shoddy.

(9) Much of the shoddy used by the plaintiff is of a kind called new shoddy. It is manufactured from cotton and wool cloth, of which no previous use has been made, consisting of clippings, cut ends and waste from cloth used in manufacturing establishments where clothes for men, women and children are turned out, and has never come into contact with the hands or persons of anybody excepting in the process of manufacture. The materials from which new shoddy used by the plaintiff is made are the same as the materials used in the manufacture of clothing, outer and under gar- [fol. 9] ments, and are free from disease and wholly safe for use by people. The shoddy made from these materials is as safe for use as the materials from which it is made, and is in no way injurious to health. New shoddy and the finished goods made from it are standard articles of trade, and constitute a valuable part of the commerce of the country.

(10) In some of the cheaper grades of bed comfortables manufactured by the plaintiff, a filling is used known as secondhand shoddy. This is made from secondhand materials consisting of cotton and wool fabrics which have had previous use. All secondhand shoddy used by the plaintiff is sterilized by a modern scientific process, and is clean, sanitary and safe for personal use, and is not detrimental to health. Secondhand shoddy, when subjected to disinfection or sterilization, is cleaner and safer for use than new cotton or new wool. Secondhand shoddy and the finished goods made from it are standard articles of trade, and constitute a valuable part of the commerce of the country.

(11) Section 2 of Act 314 of 1923 of the Commonwealth of Pennsylvania, makes it unlawful to use in the making of bed comfortables any material known as shoddy or any fabric or material from which shoddy is constructed. The prohibition against the use of shoddy in comfortables is absolute, and the prohibition against the use of any secondhand material is made contingent upon sterilization by an officially approved process, no matter how clean and wholesome these filling materials may be, and regardless of their previous hygienic use. These prohibited materials are useful and valuable articles of commerce, and have a large market and use in [fol. 10] the business of the country. These materials are not inherently and necessarily unsanitary, but either are, or may by sterilization be made, absolutely safe for use in the manufacture of comfortables. The Act, however, in spite of the prohibitions against these materials, permits in the manufacture of comfortables the use of new or secondhand feathers, excelsior, hay, grass, straw, corn husks, tow, moss, fiber, cotton, wool, hair, jute, featherdown, kapok, or other soft material, none of which is safer or more sanitary than disinfected or sterilized secondhand shoddy. The prohibi-

a thing unconstitutional?

tion of the use of shoddy and secondhand material in the manufacture of comfortables is an improper classication of, and an invalid discrimination against, legitimate articles of trade.

(12) The mills of the plaintiff are specially equipped for the manufacture of comfortables and of shoddy, and it has invested a large amount of money for the purpose of carrying on the business. For many years, the plaintiff has been selling and shipping its products manufactured in Connecticut, to its customers and dealers in Pennsylvania and elsewhere. In Pennsylvania its business amounts to more than $500,000 annually: its 1923 Pennsylvania business totalling $558,773.60 of which $188,984.60 was the price paid to it for comfortables filled with shoddy, and the balance $369,-789.00 for comfortables filled with new material, made of cotton, wool and other soft material, except shoddy.

(13) The comfortables sold by the plaintiff in Pennsylvania, are sold at wholesale to dealers, jobbers, selling agencies, and other cus-[fol. 11] tomers having places of business throughout Pennsylvania, including the Western District, and are in turn sold by the purchasers at retail to the consumers living in Pennsylvania and elsewhere. The sale of comfortables made by dealers, jobbers, selling agencies and other customers in Pennsylvania, is made in stores and elsewhere, and requires the sellers to carry stocks of comfortables in their stores and warehouses, to exhibit and display them for sale, and to advertise them in their usual advertising mediums. Some of the plaintiff's dealers, jobbers, selling agencies and customers have now on hand comfortables with shoddy filling and other fillings manufactured by the plaintiff, none of which are tagged or sterilized by a process approved by the Commission of Labor and Industry, as required by Act 314 of 1923, which were purchased before the Act became effective, and which cannot be possessed or offered for sale or sold without subjecting the possessor or seller to prosecution under the Act.

(14) The plaintiff throughout a number of years, has built up in Pennsylvania a large trade in comfortables, and acquired a valuable good will which is dependent upon its ability to have its dealers, jobbers, selling agencies and other customers continue to handle its comfortables, including those filled with shoddy, and to sell them to people living in Pennsylvania and elsewhere. The good will enjoyed and owned by the plaintiff in Pennsylvania requires that its customers and dealers shall at all times carry stocks of comfortables and continually offer them for sale, this being the only way by which the plaintiff can carry on its business.

(15) The plaintiff is advised and believes that the provisions of Act 314 of 1923 requiring the sterilization of secondhand materials [fol. 12] by a process approved by the Commissioner of Labor and Industry, requiring the issuance and posting of a permit, and authorizing the inspection of factories, are invalid in that they constitute an improper burden on interstate commerce, and purport to confer extra-territorial jurisdiction upon an officer of the Com-

monwealth of Pennsylvania. The Commonwealth of Pennsylvania cannot create a right in one of its officers to inspect factories in other States. For the Commonwealth of Pennsylvania to prohibit the sale in Pennsylvania of legitimate articles of trade made in a distant state unless the sterilizing process is approved by its officer and a permit posted in the distant factory, is an invalid burden on interstate commerce.

(16) The plaintiff is advised and believes that the requirement of Act 314 of 1923 relating to the affixing of tags to its comfortables, constitutes an unreasonable burden upon interstate commerce, and is unconstitutional. The plaintiff manufactures comfortables continuously during the year. The finished comfortables are packed into bales or wooden cases, ready for shipping, and are stored in warehouses awaiting orders. The plaintiff markets comfortables throughout the United States, and at the time of manufacture does not know whether they will be sold in Pennsylvania or elsewhere. The plaintiff does not know whether the comfortables will be sold to jobbers or to retail merchants, nor whether comfortables sold to jobbers in other states will ultimately be sold to consumers in Pennsylvania. The plaintiff is unable to determine from the Act which person in the course of marketing comfortables, whether the jobber or retail merchant, is meant by the word "vendor". Consequently, during manufacture, the plaintiff cannot fully comply with the tagging provisions of the Act requiring a statement of the name [fol. 13] and address of the vendor, nor can it be certain at time of shipment who the ultimate vendor will be. To follow the goods into trade for the purpose of affixing accurate statements on the tags, would be impracticable and burdensome. The sale, or possession for sale in Pennsylvania, of comfortables improperly marked, is a misdemeanor, and Pennsylvania customers of the plaintiff will refuse to purchase comfortables from the plaintiff unless they are properly marked. Compliance by the plaintiff with the tagging provisions of the Act will be expensive and burdensome, and will interfere with the plaintiff's right of free intercourse and trade with customers in Pennsylvania.

(17) The price, to-wit, $10.00 for each one thousand tags required by section 8 of said Act to be paid by manufacturers for said tags is excessive and unreasonable. Said tags should cost the State of Pennsylvania less than $3.00 per thousand and are worth not more than $3.00 per thousand.

(18) The plaintiff is advised and believes that the requirements of said Act relating to affixing tags is an unjust, unreasonable and illegal tax on its right to do business in the State of Pennsylvania and is invalid because it requires the affixing of the tags specified in said Act; it prohibits the use of tags manufactured by or for the plaintiff or any other manufacturer other than the tags to be obtained from the Commissioner of Labor and Industry; it requires the plaintiff or any other manufacturer or dealer in comfortables to order one thousand tags or more although a number less than one thou-

sand may be required; it prohibits a small manufacturer or dealer requiring less than one thousand tags from purchasing the number of tags needed by him; it is an attempt to require that all manu- [fol. 14] facturers and dealers obtain a license from the State to manufacture and sell comfortables.

(19) The plaintiff is advised and believes that Section 7 of the Act makes it a misdemeanor for anyone using a comfortable coming under the provisions of the Act to remove, deface, or alter any statement on a tag, or to remove any tag placed on any comfortable. This provision of the Act will tend to destroy the market for plaintiff's comfortables, and is confiscatory of its business.

(20 By Section 9 of Act 314 of 1923, the Department of Labor and Industry, through its officers and employees, is charged with the administration and enforcement of the Act, and the defendant, as chief inspection officer and agent in the Western District of Pennsylvania, has the duty of prosecuting all violations of the terms of the Act. The Department of Labor and Industry demands that the plaintiff comply with all the provisions of the Act, and threatens to prosecute the plaintiff and all the customers, dealers and agents of the plaintiff, selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, any bed comfortable made in violation of the provisions of the Act; and further threatens to prosecute the plaintiff and all its dealers, customers and agents having in possession with intent to sell, lease, deliver, or consign in sale or lease any bed comfortables made in violation of the provisions of the Act.

(21) Plaintiff believes therefore, and avers that the defendant, unless restrained from so doing, will cause proceedings to be commenced and prosecuted for the enforcement of the Act against the plaintiff. Plaintiff further believes and avers that the defendant will cause proceedings to be commenced and prosecuted with the claim that each of the many sales constitutes a separate offense.

[fol. 15] (22) The plaintiff believes and avers that Act 314 of 1923 is confiscatory of part of plaintiff's business in Pennsylvania, deprives it of its liberty and property without due process of law, and is an invalid burden on interstate commerce. If the Act is enforced against the plaintiff, it will destroy its market for comfortables in Pennsylvania, and prevent the plaintiff, its dealers, customers and agents from marketing comfortables manufactured in Connecticut, and sold in and shipped by the plaintiff from Connecticut and New York to its customers, dealers and agents in Pennsylvania, to the irreparable damage of the plaintiff and its customers. At various times since the Act was approved, both before it became effective and since, the plaintiff has been notified by dealers and customers in Pennsylvania and elsewhere, to whom it has sold comfortables for many years, that they will not buy or accept from the plaintiff any comfortables not made in compliance with the Act. They have asked the plaintiff to take back comfortables made before the Act became effective, and fearing prosecution, are refusing to give the plaintiff further orders for comfortables. The Act is now effective,

and unless enforcement of the Act is temporarily restrained, pending final hearing, irreparable loss and damage will result to the plaintiff.

(23) The plaintiff is without adequate remedy at law in the premises and only in a suit in equity of this nature can it be fully protected in the enjoyment of its rights and property and be safe from a multiplicity of suits and prosecutions. This application is made under Section 266 of the Judicial Code of the United States.

Wherefore, plaintiff prays:

(1) That Act 314 of 1923 of the Commonwealth of Pennsylvania [fol. 16] be declared to be in violation and contravention of the rights of the plaintiff because it is in violation of the Constitution of the United States and the Constitution of Pennsylvania.

(2) That the defendant and all persons associated with him be enjoined from enforcing or attempting to enforce the provisions of the Act or any part thereof, or from instituting or causing to be instituted under the Act any prosecution or proceeding, against the plaintiff, or any of its customers, dealers or selling agencies in the State of Pennsylvania.

(3) Plaintiff further prays that upon hearing, an interlocutory injunction may be issued and for all such further relief as equity may require.

Plaintiff further prays that it be granted a temporary restraining order, restraining the defendant and his associates as hereinbefore prayed until the hearing and determination of this application for an interlocutory injunction.

Wherefore, the plaintiff prays that a writ of subpœna be issued herein, directed to the above named defendant, commanding him to appear on a date certain and answer this Bill of Complaint.

The Palmer Brothers Company, a Corporation, by Ralph H. Melcer, Plaintiff. Reed, Smith, Shaw & McClay, Pittsburgh, Pa.; Hull, McGuire & Hull, New London, Conn., Solicitors for Plaintiff.

[fol. 17] Sworn to by Ralph H. Melcer. Jurat omitted in printing.

[fol. 18] EXHIBIT "A" TO BILL OF COMPLAINT

[fol. 18a] No. 314

An act relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver, or consign.

Department of Labor and Industry. Definitions. "Mattress"

Section 1. Be it enacted, &c., That the word "mattress" shall mean any quilted pad, mattress, mattress pad, mattress protector, bunk quilt, or box spring, stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, kapok, or other soft material, to be used on a couch or other bed for sleeping or reclining purposes.

"Pillow," "Bolster" or Feather Bed"

The words "pillow," bolster," or "feather bed" shall mean any bag, case, or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, gross, corn husks, moss, fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used on a bed, couch, divan, sofa, lounge, or other article of upholstered furniture for sleeping or reclining purposes.

"Comfortable"

The word "comfortable" shall mean any cover, quilt, or quilted article made of cotton or other textile material, and stuffed or filled with fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft *soft* material, to be used for sitting, resting, or reclining purposes."

"Cushion"

The word "cushion" means any bag or case made of leather, cotton, or other textile materials, and stuffed or filled with excelsior, hay, grass, corn husks, tow, moss, fibre, cotton, wool, hair, feathers, feather down kapok, or other soft material, to be used on a hammock, chair, couch, divan, sofa, lounge, or other article of furniture for reclining, resting, or sleeping purposes.

"Upholstered Furniture"

The words "upholstered furniture" shall mean any article of furniture stuffed or filled with excelsior, straw, hay, grass, corn husks, tow, moss, fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used for sitting, resting, or reclining purposes."

"New"

The word "new." as used in this act, shall mean any material or article which has not been previously manufactured or used for any purpose.

"Secondhand"

The word "secondhand" shall mean any material or article of which prior use has been made.

"Shoddy"

The word "shoddy" shall mean any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up.

[fol. 18b] "Person"

The word "person," as used herein, shall include persons, corporations, copartnerships, and associations.

Words used in the singular number shall include the plural; and the plural, the singular.

Prohibited Materials

Section 2. No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture: (a) Any material known as "shoddy," or any fabric or material from which "shoddy" is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry; (c) any new or secondhand feathers, unless such new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry.

Process for Sterilization, etc., to be Submitted to Commissioner

Section 3. Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster, comfortable, cushion, or article of upholstered furniture in which secondhand material is used, or in the making of any new or secondhand feather or down filled article, or engaged in sterilizing and disinfecting any material, feathers, or article coming under the provisions of this act, shall submit to the Commissioner of Labor and Industry for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices for the sterilization and disinfection of secondhand material, feathers, and secondhand articles herein enumerated.

Issuance of Permit. Expiration. Posting. Refusal to Display

Upon the approval of such process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the commissioner. Such permit shall expire one year from date of approval. Every person to whom a permit has been issued, shall keep such permit conspicuously posted in his office or place of business. Refusal to display such permit in accordance with this act shall be sufficient reason to revoke and forfeit the permit.

Sterilization Performed by Person Other Than Maker. Number of Permit to be Attached.

Nothing in this act shall prevent any person engaged in the making, remaking, renovating or sale of any article herein described, which requires sterilizing and disinfecting under the provisions hereof, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued,, providing the number of the permit shall appear in the statement on the tag attached to the article.

Inspection by Deparment of Labor and Industry

Section 4. All places where any mattress, pillow, bolster, bed, comfortable, cushion, or article of upholstered furniture is made, remade, or renovated, or where materials for the herein named articles are prepared, or establishment where said articles are offered for sale, [fol.18c] or are in possession of any person with intent to sell, deliver, or consign them, or establishment where sterilizing and disinfecting is performed, shall be subject to inspection by the Department of Labor and Industry to ascertain whether the materials and the finished articles herein enumerated conform to the requirements of this act.

Unlawful Sales, etc.

Section 5. No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in his possession with intent to sell, lease, deliver, or consign in sale or lease, (a) any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, made, remade, or renovated in violation of this act; (b) any second-hand mattress, pillow, bolster, feather bed, or comfortable, unless, since last used, it has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry.

Tags to be Attached to Mattress. Contents

Section 6. Each and every mattress or article covered by this act, other than a feather or down filled pillow, bolster, bed comfortable, cushion, or any second-hand article of upholstered furniture, shall

bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, (a) a statement showing whether the materials used in filling said mattress or article are wholly new or secondhand or partly secondhand; (b) the name and address of maker and vendor; (c) the word secondhand upon any article of which prior use has been made; (d) the number of the permit issued for sterilizing and disinfecting.

Tags to be Attached to Pillows.

Each and every pillow or other article covered by this act, in which feathers or down are used, shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, (a) statement that the feathers or down used in filling have been sterilized and disinfected in accordance with this act; (b) the number of the permit issued for sterilizing and disinfecting the feathers or down; (c) the name and address of maker and vendor; (d) the word secondhand upon a feather or own filled article of which prior use has been made; (e) the number of permit is-ued for sterilizing and disinfecting.

Tags to be Attached to Secondhand Upholstered Furniture

Each and every article of upholstered furniture of which prior use has been made shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, the word secondhand, together with the name and address of the vendor.

[fol. 18d] No additional information shall be contained in said statements.

Size of Tag

Section 7. The statement on the tag required by this act to be attached to any article covered by this act shall be not less than three by four and a half inches in size.

Form of Tag

The tag, with the replica of the seal of this Commonwealth printed thereon, shall be in the following form:

Official Statement

Materials used in filling: ——.
Made by: —— ——.
Vendor: —— ——.
Address: ——.
This article is made in compliance with the act of Assembly of Pennsylvania approved —— —, ——.
Permit number: ——.

Imitation of Tag, etc.

It shall be unlawful for any person to imitate, counterfeit, sell, or have in his possession any imitated or counterfeited tag required under the provisions of this act.

"Felt." "Curled Hair"

It shall be unlawful to use, exclusively, in the said statement concerning any mattress, pillow, bolster, comfortable, cushion, or article of upholstered furniture the word "Felt," or words of like import, if any other than garnetted materials are used in filling, or the words "Curled Hair," or words of like import, if other than curled hair is used in filling.

Misleading Term or Designation. Removal of Statement on Tag

It shall be unlawful to stamp or print on a tag any misleading term or designation, or to remove, deface, alter, or in any manner attempt the same, or cause to be removed, defaced, or altered, any statement on a tag placed upon any article included in the provisions of this act.

Printing of Tags. Commissioner to Furnish Tags. Price

Section 8. The Commissioner of Labor and Industry is hereby authorized to contract for printing of the tags required by the provisions of this act. The commissioner shall, upon the application to him by any person, furnish tags, with the name and address printed thereon of the maker, remaker, or renovator of any article covered by this act, in quantities of not less than one thousand tags, for which the applicant shall pay ten dollars for each one thousand tags.

Fees

All fees collected under the provisions of this act shall be paid to the Commissioner of Labor and Industry, and, when so collected and paid, shall thereafter be by the Commissioner of Labor and Industry paid into the State Treasury.

Bedding and Upholstery Fund

The State Treasurer shall establish a separate fund, to be known as the Bedding and Upholstery Fund, into which all moneys collected under the provisions of this act shall be paid, and from which [fol. 18e] all expenditures necessary in carrying into effect the provisions of this act shall be paid.

Appropriation of Moneys in Fund

All moneys in the Bedding and Upholstery Fund, from time to time, are hereby specifically appropriated to the Department of

Labor and Industry for the purpose of carrying into effect the provisions of this act, and for the payment of salaries and expenses of inspectors, employes, and for research, or any other necessary expenses of the Department of Labor and industry connected with the enforcement of this act.

Payment upon Requisition.

The money in the Bedding and Upholstery Fund shall be paid to the use of the Department of Labor and Industry, in advance, form time to time, as the same is required, upon requisition by the Commissioner of Labor and Industry.

Warrant of Auditor General

The Auditor General shall, upon requisition, from time to time, of the Commissioner of Labor and Industry and the proper accounting for moneys already advanced from the fund, draw his warrant upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund available for the purposes herein specified at the time such requisition is made.

Enforcement of Act

Section 9. The Department of Labor and Industry, through its officers and employes, is hereby charged with the administration and enforcement of this act.

Violations. Penalty. Proviso

Section 10. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof in a summary action before a magistrate, alderman, or justice of the peace, shall be sentenced to pay a fine of not less than ten dollars and not more than fifty dollars for each offense, and, in default of the payment of such fine, to undergo an imprisonment of not less than ten days for each separate offense: Provided, That the total term of imprisonment at one time for additional offenses shall not exceed six months.

Separate Offenses

Each mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, made, remade, or renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver, or consign, contrary to the provisions hereof, shall constitute a separate offense.

Each imitated or counterfeited tag made, used, sold, offered for sale, delivered, or consigned, contrary to the provisions hereof, shall constitute a separate offense.

Revocation of Permit

The commissioner may revoke any permit issued under the provisions of this act if the person to whom the permit was issued has violated any provisions of this act or the rules or regulations established thereunder.

Section 11. It is the intention of the General Assembly that, if this act cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding unconstitutional any part or parts hereof, the remaining provisions of the act shall be given full force and effect as completely as if the part or parts held unconstitutional had not been included herein.

Act of May 1, 1913 (P. L. 134), Cited for Repeal. Act of May 14, 1915 (P. L. 510), Cited for Repeal. Repeal

Section 12. The following acts, which this act is to replace: Act number 90, approved May first, one thousand nine hundred and thirteen (Pamphlet Laws, one hundred and thirty-four), entitled "An act defining mattresses; regulating the making, remaking, and sale thereof; prohibiting the use of unsanitary and unhealthy [fol. 18f] Legislative Intent. Constitutionality materials therein; requiring that the materials used shall be accurately described, and prescribing the manner in which mattresses shall be labeled; providing for the enforcement of the provisions of this act; making certain acts criminal, and punishing the same; imposing certain duties upon the Commissioner of Health and the Chief Factory Inspector; and repealing legislation inconsistent with this act," which was amended by act, two hundred and nineteen, approved May fourteenth, one thousand nine houndred and fifteen (Pamphlet Laws, five hundred and ten), and all other acts or parts of acts inconsistent herewith, or replaced hereby, are repealed.

When Act Takes Effect

Section 13. This act shall take effect January first one thousand nine hundred and twenty-four.

Approved the 14th day of June, A. D. 1923.

Gifford Pinchot.

The foregoing is a true and correct copy of the Act of the General Assembly No. 314.

Clyde L. King, Secretary of the Commonwealth.

[fol. 19] EXHIBIT "B" TO BILL OF COMPLAINT

[fol. 19a] Commonwealth of Pennsylvania, Department of Labor and Industry, Harrisburg, Pa.

## Bedding and Upholstery Act

The Pennsylvania Bedding and Upholstery Act, effective January 1, 1924, regulates the making, remaking, renovating and sale of mattresses, pillows, bolsters, feather beds, comfortables, (quilts), cushions, and all articles of upholstered furniture; prohibits certain filling materials; provides for the sterilizing and disinfecting, under approved processes, of all feathers, second-hand material, and second-hand articles; requires a permit for such sterilizing and disinfecting processes; requires a statement stamped or printed on a tag to be securely attached to all new and secondhand articles.

## Materials Which May or May Not be Used for Filling

Materials which have not previously been manufactured into yarn or fabric, and subsequently cut up, torn up, broken up or ground up, may be used for filling.

Shoddy shall not be used for filling.

Secondhand materials, that is, materials of which prior use has been made, if used for filling, must be sterilized and disinfected by an approved process, for which a permit has been secured.

Feathers and feather down used for filling must be sterilized and disinfected by an approved process, for which a permit has been secured.

Raw or uncured feathers or feather down shall not be used for filling.

## Sterilizing and Disinfecting Processes and Permits

Applications for approval of sterilizing and disinfecting processes must be made to the Secretary of Labor and Industry, Harrisburg, Penna. Plans in duplicate of apparatus or auxiliary devices must be filed with the application, setting forth the process or processes to be used. If approved, a numbered permit for such use will be issued to the applicant, which will expire one year from date of approval. The permit must be posted in a conspicuous place in the office or place of business of the applicant. Refusal to post a permit in compliance with the provisions of the Act will be sufficient reason to revoke the same.

[fol. 19b] The number of the permit issued for sterilizing and disinfecting filling materials, feathers, and all secondhand articles, must be inserted in the statement on the tag attached to all remade, renovated articles, all feather filled, and all secondhand articles (Secondhand upholstered furniture alone excepted).

## Official Tags

Each new or secondhand mattress, pillow, bolster, feather bed, comfortable, (quilt), cushion and article of upholstered furniture, made, remade, renovated, sold, or in possession of any person with intent to sell, lease, or consign in sale or lease, or deliver, must have securely attached thereto, a tag, on which must be plainly and indelibly stamped or printed, in English, a statement of the materials used in filling, and the name and address of maker and vendor.

These tags must be procured from the Department of Labor and Industry, Harrisburg, Penna., at ten dollars ($10.00) per thousand tags.

A smaller quantity than one thousand tags will not be sold. An order blank is furnished by the Department, that errors may be avoided.

Each request for tags must be accompanied by a certified check, payable to the Department of Labor and Industry.

Severe penalties are provided in the Act for imitating or counterfeiting, selling, offering for sale, using or delivering tags contrary to the provisions of the Act.

## Statements on Tags

Care should be taken that only such information as is required by law, shall be stamped or printed on the tag in the space provided therefor.

The form for the tag and the information to be contained in the statement are set forth in the Act, and to make any change in the prescribed form is unlawful.

State plainly if the materials used in filling are wholly new or secondhand, or partly secondhand. Give a true and accurate description of the materials used in filling.

Both maker and vendor must place their names and addresses in the space provided therefor on the tags.

Upon all feather filled articles, the number of the sterilizing and disinfecting permit must be stated on the tag.

All secondhand articles must have stamped or printed on the tag the word, secondhand.

All secondhand articles, (other than upholstered furniture), must have stamped or printed on the tag, the number of the permit secured for sterilizing and disinfecting such secondhand articles.

Maker and vendor are equally responsible under the law for unlawful tags, filling materials and statements, or the offering for sale of any article contrary to law.

[fol. 19c]

## Penalties for Violations

The Act provides for prosecution for violations, before a Magistrate, Alderman or Justice of the Peace. Upon conviction a fine of not less than $10.00, nor more than $50.00 can be imposed for each

offense. In default of the payment of a fine the offender shall undergo an imprisonment for not less than ten days for each offense or not more than a total of six months.

Each mattress, pillow, bolster, feather bed, comfortable, (quilt), cushion, or article of upholstered furniture, made, remade, or renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver, or consign, and each imitated or counterfeited, tag made, used, sold, offered for sale, delivered, or consigned contrary to the provisions thereof, constitutes a separate offense.

The Secretary of Labor and Industry may revoke any permit issued under the provisions of the Act, if the person to whom the permit was issued, has violated any provisions thereof, or rules, or regulations, established thereunder.

The Department of Labor and Industry is charged with the enforcement of the Bedding and Upholstery Act. Your cooperation is earnestly solicited in carrying out the provisions thereof.

[fol. 20] [File endorsement omitted.]

The within is a true copy of the Bill of Complaint filed in this case.
Reed, Smith, Shaw & McClay, Solicitors for Plaintiff.

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[fol. 21] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Jany. 19, 1925

And now comes D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh, of the Department of Labor and Industry of the Commonwealth of Pennsylvania, the defendant, and for answer to the Bill of Complaint of the Plaintiff, answers as follows:

(1) The defendant admits the allegations contained in the first paragraph of the Bill of Complaint.

(2) The defendant admits the allegations contained in the second paragraph of the Bill.

(3) The defendant admits the allegations contained in the third paragraph of the Bill of Complaint.

(4) The defendant is without knowledge as to the allegations and averments contained in the fourth paragraph of the Bill of Complaint.

(5) The defendant admits the allegations contained in the fifth paragraph of the Bill of Complaint.

(6) The defendant admits the averments contained in the sixth paragraph of the Bill of Complaint insofar as they are proper and

material statements of fact, and in further answer thereto avers that the said sixth paragraph of said Bill of Complaint purports to be a [fol. 22] recital of the provisions of said Act #314 of the General Assembly of Pennsylvania of 1923, together with the interpretation thereof placed thereon by the plaintiff and his counsel, and embraces the legal conclusions arrived at by the said plaintiff and his counsel, and therefore are not proper, competent and material allegations of fact as a basis for the relief prayed for by the plaintiff, but on the contrary are questions for judicial determination.

(7) The defendant denies the averments contained in the seventh paragraph of the Bill of Complaint.

(8) The defendant is without knowledge as to the averments contained in the eighth paragraph of the Bill of Complaint.

(9) The defendant is without knowledge as to the averments contained in the ninth paragraph of the Bill of Complaint.

(10) The defendant is without knowledge as to the averments contained in the tenth paragraph of the Bill of Complaint.

(11) The defendant admits that Section 2 of Act #314 of the General Assembly of Pennsylvania of 1923 makes it unlawful to use, in the making of bed comfortables, any material known as shoddy, or any fabric or material from which shoddy is constructed, and that the prohibition against the use of shoddy in comfortables is absolute, and that the use of any second hand material is prohibited unless it is sterilized by an officially approved process, regardless of their previous use. The defendant denies all of the other averments contained in the eleventh paragraph of the Bill of Complaint, and in further answer thereto avers that the preservation of the public health of the citizens of the Commonwealth of Pennsylvania, and the protection of said citizens against the fraud and deceit of manufacturers and dealers in bedding and comfortables require the prohibitions, restrictions, and inspections, and sterilizations provided for in said Act #314 of the General Assembly of Pennsylvania of [fol. 23] 1923, and the said defendant further specifically denies that the prohibition of the use of shoddy and second hand material not sterilized in the manufacture of comfortables is an improper classification of, and an invalid discrimination against legitimate articles of trade.

(12) The defendant is without knowledge as to the averments contained in the twelfth paragraph of the Bill of Complaint.

(13) The defendant is without knowledge as to the averments contained in the thirteenth paragraph of the Bill of Complaint.

(14) The defendant is without knowledge as to the averments contained in the fourteenth paragraph of the Bill of Complaint.

(15) The defendant denies the allegations contained in the fifteenth paragraph of the Bill of Complaint.

(16) The defendant denies that the requirements of Act #314 of 1923, relating to the affixing of tags to the comfortables of the plaintiff constitutes an unreasonable burden upon interstate commerce, and is unconstitutional, and the defendant further avers that he is without knowledge as to all of the other allegations contained in the sixteenth paragraph of the Bill of Complaint.

(17) The defendant denies the averments of the seventeenth paragraph of the Bill of Complaint.

(18) The defendant denies the averments of the eighteenth paragraph of the Bill of Complaint.

(19) The defendant denies the averments of the nineteenth paragraph of the Bill of Complaint.

(20) The defendant admits the averments of the tweentieth paragraph of the Bill of Complaint, except the averment that the defendant as Chief Inspection Officer and agent in the Western District of Pennsylvania has the duty of prosecuting all violations of the terms of the Act, and in answer thereto avers that the enforcement of said Act #314 of the General Assembly of Pennsylvania [fols. 24-26] of 1923 is delegated to the Section of Bedding and Upholstery of the Department of Labor and Industry.

(21) The defendant denies the averments contained in the twenty-first paragraph of the Bill of Complaint.

(22) The defendant denies the averments contained in the twenty-second paragraph of the Bill of Complaint, except that portion thereof which relates to the notices and requests received by the plaintiff from its dealers and customers in Pennsylvania and elsewhere, as to which averments the defendant is without knowledge.

(23) The defendant denies the averments contained in the twenty-third paragraph of the Bill of Complaint.

Wherefore, the defendant prays that said Bill of Complaint be dismissed and that the prayer for an injunction be denied at the cost of the plaintiff.

D. E. Weaver.

Sworn to by D. E. Weaver. Jurat omitted in printing.

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[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

**Statement of Evidence.**

CAPTION

And now, to wit, Monday, February 16, 1925, at 10 o'clock, A. M., the above cause came on to be heard before Hon. F. P. Schoonmaker, J., at Pittsburgh, Pennsylvania.

APPEARANCES OF COUNSEL

For Plaintiff: Messrs. Reed, Smith, Shaw & McClay, by E. W. Smith, Esq., Carl E. Glock, Esq., F. G. McGuire, Esq.
For Respondent: E. Lowry Humes, Esq.

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[fol. 28] OFFER IN EVIDENCE

Mr. Smith: Counsel for plaintiff offer the following paragraphs of the bill of complaint, which are admitted by the answer:

"(1) The plaintiff, The Palmer Brothers Company, is a corporation organized and existing under the laws of the State of Connecticut. The plaintiff is a citizen of the State of Connecticut, and its principal place of business is located in the City of New London, in the State of Connecticut.

"(2) The defendant, D. E. Weaver, is a citizen of the State of Pennsylvania, residing at Pittsburgh, in the Western District of the State of Pennsylvania. By due appointment, he is a chief of the Bureau of Inspection of the Department of Labor and Industry of the Commonwealth of Pennsylvania, and is in charge of the branch office of the Department of Labor and Industry in the City of Pittsburgh, in the Western District of Pennsylvania.

"(3) This is a suit of a civil nature, arising out of the Constitution of the United States. The parties are of diverse citizenship. The matter in controversy exceeds the sum of $3,000 in value, exclusive of interest and costs.

[fol. 29] "(5) The General Assembly of the Commonwealth of Pennsylvania, at the session of 1923, passed Act #314, which was approved by the Governor on the 14th day of June, 1923. It is found in the 1923 Pamphlet Laws of Pennsylvania, at page 802, and is entitled 'An Act relating to mattresses, pillows, bolsters, feather-beds, comfortabes, cushions and upholstered furniture, regulating the making, remaking, renovating, sterilizing, disinfecting, selling, leasing, delivering and consigning thereof, and the possession thereof with intent to sell, lease, deliver or consign.' The Act became effective January 1, 1924. A copy of the Act is hereto attached as Exhibit 'A', and is hereby made a part of this bill of complaint as fully as if herein set out. A copy of the rules promulgated by the Department of Labor and Industry of the Commonwealth of Pennsylvania, in the administration of Act 314 of 1923, is hereto attached as Exhibit 'B', and is hereby made a part of this bill of complaint as fully as if herein set out."

Also, that paragraph or twentieth section which provides that the Department of Labor and Industry demands that the plaintiff comply with all the provisions of the Act, and threatens to prosecute the plaintiff and all the customers, dealers and agents of the plaintiff,

[fol. 30] selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, any bed comfortable made in violation of the provisions of the Act."

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[fol. 31] GEORGE S. PALMER, a witness called on behalf of Complainant, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. New London, Connecticut.
Q. What is your business?
A. The making and selling of comfortables.
Q. What is your connection with the Palmer Bros. Company?
A. President of that concern.
Q. How long have you been connected with that company?
A. During its whole life.
Q. When was it incorporated?
A. 1899.
Q. Prior to that time, was their business conducted in New London?
A. Yes.
Q. By whom?
A. By my brothers.
Q. When was the business organized—or rather, begun?
A. When my brothers came back from the Civil War, they took over the cotton business of my father, which extended a way back to my grandfather and greatgrandfather in various ways, to 1790, and soon after that began the manufacture of bed comfortables. [fol. 32] Before that, they made other cotton materials.
Q. How early were you actively engaged in the manufacture of bed comforters?
A. For over fifty years; as a boy, more or less. But after I left college in 1878, I gave my whole attention to that business.
Q. In what capacity?
A. As salesman, perhaps, first; then as manager of mills, plus salesman.
Q. And you are still connected with the company, are you?
A. Yes.
Q. Are you familiar with the use of shoddy in the manufacture of comfortables?
A. I am.
Q. How long have you been?
A. Half a century.
Q. During all that time, have Palmer Bros. Company, or their predecessor, been making comfortables filled with shoddy?
A. They have.

Q. What is shoddy?

A. I should say shoddy is any material, especially, textile material, reduced to its original state, by a process of shredding, pulling asunder.

Q. The definition of "shoddy" in the Act is, "The word shoddy shall mean any material which has been spun into yarn knit or woven into fabric, and subsequently cut up, torn up, broken up or [fol. 33] ground up." Is that a good definition of "shoddy"?

A. In general, I should say it is.

Q. Close enough, I suppose?

A. I think so, yes. It is a broad term—shoddy.

Q. Are there different classes of shoddy?

A. A great many.

Q. Name some of the distinctions between shoddy. I want to particularly call your attention to some shoddy here, manufactured from new material, and some from old.

A. Shoddy is made from a very great variety of materials, ranging in price from a very few cents per pound to materials worth seventy-five cents or even perhaps a dollar per pound.

Q. Describe the cheap shoddy.

A. The cheap forms of shoddy are made, beginning with the material that has been used, or second-hand material. It is made from rags, from used clothing and similar materials that might be classed with those. The shoddy called new shoddy is made from new clippings or pieces of cloth, which remain after garments have been cut out of the cloth in the yard; they are edges, remnants, ends, which have never been used, clean and new. Those together perhaps with cotton cloth linings, and so forth, called tailors' clippings, are picked apart and become shoddy, called new shoddy, which is perfectly clean and perfectly sanitary.

Q. Describe in a general way the making of shoddy from these materials that you have described.

[fol. 34] A. Well, the rags or the clippings, whatever may be the material, is fed on to what we call an apron, a revolving apron, fed into grooved rolls held tightly together under great pressure, and butted up against a fast revolving cylinder full of iron pins revolving from one to 2,000 turns a minute. As this material comes against the pins, it is shredded and reduced to what we call its original fibrous form, yarn form, or even further. It varies. It becomes a fluffy material, more or less like the original material of which it is made. Then it is blown out through pipes to a receptacle which separates the air and most of the dust from it, and the shoddy drops and is then taken to other machinery for working into——

Q. That is the process you call picking?

A. Yes.

Q. Tearing it apart?

A. Yes.

Q. Proceed.

A. Then it is fed into another similar machine, to a picker, except that it hasn't—it has beaters that lay the material into a flat

form on a cylinder, so that it will roll into a roll. Usually they are three feet wide, and the roll is about a foot or eighteen inches in diameter, a rather smooth roll, which can, as you will readily see, be unrolled on the cloth and becomes the filling of the comfortable.

Q. What is that process called?

A. It is called lapping.

[fol. 35] Q. What is garnetting?

A. Garnetting is taking the shoddy, fitting it into a system of carding rolls. Garnetting is carding. Garnetting is more efficient for this purpose. Carding is used in other purposes. It is to take the further strain out and taking apart the fibrous material and arranging it in a large roll six feet wide, which roll is in a soft fluffy form, being one step in advance of lapping.

Q. That is, garnetting comes before the lapping?

A. The lapping isn't used in case of garnetting. It is two processes.

Q. What did you mean by saying that garnetting was one step in advance of lapping?

A. Because the garnet is a refined machine, a larger machine, and has tooth rollers, large numbers of them, as the cut of the machine shows, and it cards out the material, so as to make it lively, lofty and fluffy, the whole theory of a comfortable being arranged, the materials, so that the air will be retained in large masses, and thereby conserve the warmth.

Q. Was this much the same process for making shoddy used during the whole fifty years of your experience?

A. The process is the same.

Q. Was there ever any attempt until recently, say, to sterilize or disinfect shoddy, in so far as the manufacture of comfortables is concerned?

A. Not that I know of.

[fol. 36] Q. Was there ever, in your plant?

A. Not until recent years.

Q. What processes have you adopted for disinfection or sterilization?

A. In general, our first attempt to disinfect the material was by spraying on it at different periods of its process a disinfecting material.

Q. That was pyxol(?)?

A. The last one I think was pyxol.

Q. What is pyxol?

A. It is a disinfecting material of very high efficiency, about twenty times as efficient as carbolic acid, so I understand. I couldn't give a scientific definition of pyxol.

Q. That is what they mean by saying that pyxol has a coefficient of twenty as to phenol, is it?

A. Yes.

Q. Phenol is carbolic acid?

A. Yes.

Q. You say it is?

A. I think so; I wouldn't be positive.
Q. You now use a steam process, I believe?
A. We do.
Q. I don't want you to describe it in detail, because that will come later; but just tell us in a general way what it is.
A. The steam process is the injection of steam under considerable pressure in a tightly enclosed boiler, into which this material has [fol. 37] been put. In our works, it has to be done in a large way, and consequently we load the material on to a traveling crane, which is thrust into the long boiler, and the doors are closed, and a vacuum secured to make the permeation of the steam more quickly, and then steam is put in there, until the heat becomes 250 or 260, — and it is left there long enough to kill any bacteria that might be there, and afford a perfect disinfection.
Q. During all your connection with the plaintiff in this case, and your knowledge of the use of shoddy, have you ever known of any sickness in the mill or in the vicinity that ever was traced to the use of shoddy?
A. I have never known any suggestion of such a tracing or possibility.
Q. Have you had in times past, and now, a large business in the lower grades of shoddy-filled comfortables?
A. We have, a very large business.
Q. Does that business extend to Pennsylvania?
A. It does, or did.
Q. What is the price say, of your lowest shoddy-filled comfortables?

Mr. Humes: Do you mean the market price?
Mr. Smith: Yes.

[fol. 38] Mr. Smith:

Q. We might start with your price, and then give the retail dealer's price?

Mr. Humes: I don't think that I care to formally object to this, but I do not think it is material.
The Court: At present, we do not see the materiality of it, but we will take the testimony.

A. I couldn't give you the exact price without a price list.

Mr. Smith:

Q. In a general way.
A. In a full size, I think it is about seventeen or eighteen dollars a dozen. We always go by the dozen.
Q. Is that your price?
A. Our price; something like that.
Q. Is there an extensive use of these cheap comfortables?
A. There is a very large use of them.
Q. In Pennsylvania and in other parts of the country?

A. Yes.

Q. You have given some attention to the provisions of this statute have you?

A. Some attention, yes.

Q. And you know that under that statute shoddy is entirely pro-
[fol. 39] hibited in the manufacture of comfortables, mattresses, and so forth, do you?

A. We assume it is, in our conduct.

Q. It is in terms?

A. Yes.

Q. And is, until the Court says it is unconstitutional?

A. Yes.

Q. Are you familiar with some of the other articles that are permitted under this statute?

A. More or less familiar with some of them.

Q. You know something about the use of wool in the manufacture of clothing, cloth, and also its use in comfortables, do you?

A. Yes.

Q. Do you also know the use of cotton in the manufacture of cloth, comfortables, and so forth?

A. Yes.

Q. You know what cotton linters are, do you?

A. Yes.

Q. What are cotton linters?

A. Cotton linters are lint, cotton lint, taken from the cottonseed. It is the lint which adheres to the cottonseed after the first operation, whereby the seed is separated from the cotton.

Q. That is done by the gin?

A. That is done with the cotton gin; a series of sawteeth that
[fol. 40] draw the cotton fibre down and leave the seeds. The seeds drop below, clothed with more or less fibre. That fibre is afterwards taken off the side by operations, and becomes linters.

Q. Then that cotton linter is used in the manufacture of cloth, is it—or what are they used for?

A. The best linters, those with a staple, as we call it, long enough, may be used in cloth, especially coarse cloth, and are, I think. The shorter staples, those which are usually called second cut—they sometimes put the seed through a second operation, after the long staple has been taken off, to get a shorter staple, and that is used very much for filling purposes in a large variety of trades.

Q. And without sterilization?

A. I think so. I am sure, without sterilization.

Q. And for all sorts of wool used in the manufacture of woolen cloth and woolen garments?

A. Yes

Q. Describe some of the——

Mr. Humes: I object to an inquiry into the textile industry at this time. I don't think it is material or competent for any purpose in this case.

Mr. Smith: It is a very important phase in this case, the discrimi-
[fol. 41] nation in the statute against the use of shoddy. We are

going to show by Mr. Palmer, if we can, and by other witnesses, that there is a discrimination in this respect, that the statute provides for the sterilization of certain second-hand materials, provides for the prohibition of shoddy, and yet permits things that are more likely to carry infection, to be used not only in the mattress trade, but in the textile trade, without any sterilization at all.

The Court: I think we ought to hear the evidence on this. The objection is overruled and an exception noted to respondent.

Mr. Smith:

Q. Describe some of the forms of wool used in the woolen trade, in the manufacture of textiles or entering into the filling of comfortables and mattresses.

A. The makers of cloth and textiles use all kinds of wool.

Q. They use the wool that is taken from the back of the sheep?

A. Yes; they use what we call virgin wool, and they use scoured wool. They use wools of various kinds, and they use all kinds of clippings, shoddy made from fine clippings, these high-priced ones I have spoken of, and the cheaper clean clippings then descend [fol. 42] into the second-hand material of various forms. There are a great variety of them. The rag business is a tremendous business, using in the various forms of textile manufacture.

Q. Aside from the mattress or bedding business, is shoddy handled commercially?

A. Oh, yes.

Q. To what extent?

A. To the extent of millions of dollars.

Q. What is shoddy used for, besides your use of it?

A. It is used for all kinds of padding and stuffing materials, wherever other material might be used, and in all sorts of textile operations, to combine with other materials. Its use is world-wide.

Q. Is it used in the manufacture of cloth?

A. Oh, yes; I call that the textile material.

Q. And in the manufacture of hosiery?

A. Yes.

Q. What else?

A. Blankets and sweaters and clothing, all kinds. There is hardly any limit to its use.

Cross-examination.

Mr. Humes:

Q. You have testified with reference to the methods of sterilization. I believe you say that sterilization is rather a new undertaking, a new department in the manufacture of bedding. It is [fol. 43] rather recent?

A. In the manufacture of comfortables?

Q. Yes. For how long a period have you been undertaking to sterilize by some method?

A. I should think fifteen years or more.

Q. Fifteen years?

A. I should think so. That is indefinite.

Q. What methods of sterilization have you used, other than the pyxol and the steam process?

A. I cannot answer that.

Q. Have you ever used any other method?

A. And spraying methods.

Q. But the pyxol method was a spraying method?

A. Other methods were a spraying method also, a chemical disinfectant.

Q. Then you used some spraying materials before you commenced the use of pyxol, did you?

A. Yes, I think we did.

Q. And your experience has convinced you that that spraying method is not a satisfactory method, and you have abandoned it, or practically so?

A. Experience has not confinced us of that fact, but your law has convinced us of that fact, if anything, or similar laws.

Q. If it was not your own experience, what led you to practically abandon your pyxol method?

A. To try to satisfy these inhibitions of the state.

[fol. 44] Q. The inhibitions of what state?

A. We find various laws being passed in various states, largely and generally exclusively referring to mattresses, and we also find in your state, and in perhaps a few others, the tendency to extend those prohibitions to our business. To try to meet those in a reasonable way, we are trying to conform our manufacture to the utmost scientific requirements, whether demanded by one state or another, or none.

Q. Are we to understand that your abandonment of the pyxol method was due to the legislation of some particular state, or only to the experience of the states that are enforcing a law similar to this?

A. I don't know the experience of the various states.

Q. Then why have you abandoned, or practically abandoned, the use of pyxol as a sterilizing process?

A. To satisfy, as far as possible, any law that may have been or should be passed, as we can do it scientifically and commercially, in trying to preserve our business. I would say further, that we resent the imputation that we would, under any circumstances, do anything knowingly to affect the health of anybody, anywhere, and we, to be abnormally careful, are perfectly willing to undertake any scientific requirement demanded by anybody anywhere. We have an immense business, built up in the last fifty years.

Q. To go back to the question, has it been scientifically deter-

[fol. 45] mined that steam is a more effective method than pyxol?

A. I think it is. Pyxol, as a practical matter, perhaps not theoretically but as a practical operation day by day, yes; and it is cheaper as a practical matter.

Q. Have you been induced to adopt the steam method because of

the requirements that have been laid down by any particular state, to whose laws you have undertaken to conform?

A. No, I don't think we have. No method satisfies the Pennsylvania law. Consequently, we haven't done it to satisfy that law.

Q. That is, as applies to shoddy?

A. Yes.

Q. And the same thing is true of a number of other states, is it not?

A. I don't know.

Q. Don't you know there are other states whose laws prohibit the use of shoddy as well as Pennsylvania?

A. You mean, shoddy in comfortables?

Q. Yes.

A. Not definitely; no, I don't. Shoddy in forms, you mean?

Q. Yes.

A. Certainly not in any state, that is imported to us.

Q. Isn't it your purpose in this litigation, and aren't you attacking as well as the laws of Pennsylvania the laws of several other states whose provision with reference to the use of shoddy is the [fol. 46] same as that of the Pennsylvania statute?

A. No, we are not.

Q. Would not that be the effect of a judgment in this case?

Mr. Smith: I don't think you ought to ask Mr. Palmer that.

The Court: That would hardly be the way to prove the effect of a decision of the Supreme Court.

Mr. Humes:

Q. Have you submitted to the requirements of the law of any state with reference to the sterilization of your commodity?

Mr. Smith: I object to that.

A. I don't know what you mean.

The Court: The plaintiff here is attacking the validity of the Pennsylvania statute as being an act in such a way as to deprive the plaintiff of its rights under the Federal constitution, and we do not just see how its position and attitude with reference to the laws of other states would have any bearing upon the legal question at issue here. They might have similar litigation in other states, [fol. 47] and we do not see how the mere fact of their having other litigation would have any bearing upon the issue of law that we must decide here, raised by the pleadings in this case.

Mr. Humes: The question is withdrawn for the present.

Mr. Humes:

Q. You say that much shoddy is used in the textile industry. Are you familiar with the manufacture of textiles?

A. Only in a general way.

Q. You are familiar with the fact that materials that are used in the textile industry are carbonized, are they not?

A. Some are; yes, I know that.

Q. It is necessary to carbonize shoddy, is it not, before it is used in the textile industry?

A. I don't think it is.

Q. It is practically all carbonized, is it not?

A. No.

Q. How else is it used? How is it used without carbonizing?

A. Carbonizing is to burn out the cotton and leave the wool. It is used mixed, without carbonization.

Q. To what extent are you familiar with the use of shoddy in the textile industry, in instances where it is not carbonized?

A. Only in a general way.

[fol. 48] Q. You have no special technical knowledge of that industry them?

A. I have not.

Q. How much shoddy do you use in the course of a year in your plant?

A. It varies as our business varies. In 1912 and '13, before the war, for instance, we were making more than a million shoddy comfortables, which would call for eight or nine million pounds of shoddy. Last year we used four to five million pounds of shoddy

Q. Do you grind up—I may not use the proper trade expression, but I think you will understand what I mean. Do you manufacture your own shoddy, grind up your own shoddy?

A. Yes. It is picking and not grinding. Picking is the technical name.

Q. You buy the rags?

A. We do.

Q. In the open market?

A. Yes.

Q. Then you grind them up and make shoddy out of them?

A. Yes.

Q. How much of these rags that you use are imported, come from foreign countries?

A. That varies greatly, according to the price; sometimes none and sometimes a considerable quantity. It varies greatly.

Q. The foreign market is one of the good markets for cheap rags, is it not?

[fol. 49] A. Sometimes. It varies greatly.

Q. And in the ordinary course of your business, over a given period of time, you use a great many imported rags, do you not?

A. Not in proportion to the domestic, but we might use a great many.

Q. In other words, you are governed in the use of these rags by the cheapest market, you bought them where you would get them the cheapest?

A. Yes.

Q. And these rags that are not imported rags are the rags that

are gathered up by the junk dealers usually in the larger cities, are they not?

A. Well, we call them rag dealers. It is a regular business.

Q. And you get all sorts of filthy material in those rags, do you not?

A. Well, I would like to have the word "filthy" defined before I answer that.

Q. I am using it in the ordinary sense that you and I understand it, in our everyday conduct, with the ordinary things that we see and come in contact with.

A. We buy selected rags. As it happens, they are supposed to have the undesirable elements removed. I couldn't say that every piece was removed for all time. I could not.

Q. Do you confine your purchases to selected rags?

A. Yes, we try to.

[fol. 50] Q. I understood you a moment ago to say that you bought the cheapest rags you could get?

A. That were suitable for our business.

Q. That were suitable for your business?

A. Certainly.

Q. What is the difference between the so-called selected rags and the ordinary rags that are of the lower classification?

A. A great deal of the material that is gathered up by the gatherers is unsuitable for our purpose, and we insist upon its being sorted out.

Q. Tell us what sort of materials are unsuitable that you have selected out of this shoddy?

A. I don't think I could give you a list of those.

Q. You are not familiar, after fifty years' experience in the business—aren't you in a position to tell us what rags are unsuitable for your purposes, the class of rags that you refer to?

A. I couldn't give you a complete list of them.

Q. I am not asking for a complete list of them. We all overlook something on occasion. But just give us as near as you can. For instance, is old burlap suitable for your purposes?

A. There might be pieces of old burlap, but in general that is not included in the selected.

Q. How about the use of old cement sacks?

A. I don't think we get enough of those to consider. There are a great many things, individual pieces of things, that might appear [fol. 51] in this material, which are not of enough importance to be considered commercially.

Q. In other words, the undesirable or apparently undesirable and questionable materials that are in your bedding are in every instance an exception, and are there only by mistake, because you haven't gotten all of the questionable material out. Is that what we are to understand you to say?

A. I should say that in general.

Q. You grind up old clothing for rags, do you not?

A. We do.

Q. I show you that (indicating comforter). That is one of your tags, is it not, on one of your comforters?

A. I should think it might be.

Q. Don't you know that it is? Isn't that one of the tags that you use? Isn't that one of your tags?

A. I think it is. I am not positive.

Q. That is one of your comforters, is it not, and bears one of your tags? (Showing witness another comforter.) So that the testimony will conform to the record, I show you Respondent's Exhibit "A," the comforter which you have just examined and said you believed was yours and ask you if that is a Palmer Bros. Company comforter, with the tag used by your company?

A. Yes, I think so. I wouldn't be sure of that one.

Q. But you think it is?

A. Yes.

[fol. 52] Q. I show you Respondent's Exhibit "B," and ask you if that is a Palmer Bros. Company comforter?

A. I think it is.

Q. And the tag attached to it is the tag used by Palmer Bros. Company in tagging comforters of that class?

A. I wouldn't be sure of that. I am not right in the immediate process of manufacture.

Q. I show you Respondent's Exhibit "C," and ask you if that is a comforter manufactured by Palmer Bros., and bearing the tag of Palmer Bros.

Mr. Smith: I don't exactly know how this witness on the stand can tell that. That tag there hasn't got his name on it.

Mr. Humes: If counsel will admit that these are Palmer Bros. Company articles, I will not encumber the record.

Mr. Smith: If Mr. Palmer knows that they are his articles, I do not object to his saying so.

The Court: We think Mr. Palmer is fully qualified to take care of himself on the witness stand. He is a man of intelligence, and we think he can properly take care of himself.

[fol. 53] Mr. Smith: I merely want Mr. Humes to show where they came from.

The Court: That question can be properly raised when they are offered in evidence.

A. I am not certain as to this one. It is difficult.

Mr. Humes:

Q. I ask you whether or not Palmer Bros. used a tag on their shoddy comforters similar to the tag on this Exhibit "C"?

A. I think we do.

Q. You do?

A. Yes. The tags are changed so often, and I am not in immediate touch with the changes made in the tags on our goods.

Q. Are these tags the tags you use, tags prepared in conformity with the laws of the State of Connecticut?

A. They are not objected to in Connecticut. I don't know.

Q. I am asking you if they are used in conformity with the law of Connecticut.

A. I don't know.

Q. Doesn't the law of Connecticut require the tagging of your commodity?

A. I think not. I don't know.

Q. You don't know?

A. I don't know.

[fol. 54] Q. Does your tag set forth that it is attached in conformity with the laws of the States of California, Massachusetts, Minnesota and other states? Is that on your tags?

A. We have different tags, trying to accommodate ourselves to the laws of the different states. I cannot swear positively anything in relation to a tag. I am not directly connected with that department of our business.

Q. Is it not a fact that in the conduct of your business, notwithstanding the fact that the State of California has passed a new act, that is entirely different from the provisions of the Act of 1915, that you put this tag, or a tag similar to this, on all of your comforters, to the effect that "This article conforms to the California Act of June 7, 1915," ignoring the new act of California, and isn't it done for deceptive purposes?

Mr. Smith: That is objected to.

The Court: The question might go to the good faith of the company. This is the president of the corporation. We do not even know now, and do not undertake to say, that the question of good faith would have any bearing upon this question of the legality of this statute; but we think we ought to hear the evidence. Therefore, if you will make a formal objection on the record, we will overrule it.

[fol. 55] Mr. Smith: We object to it.

The Court: The objection is overruled and an exception noted to plaintiff.

(Question read.)

A. It is not a fact.

Mr. Himes:

Q. The fact remains that that comforter does not conform to the present laws of the State of California, does it?

A. I don't know. We are trying to conform to the State of California laws, and our goods go into California without question at the present time.

Q. I call your attention again to the Respondent's Exhibit "B," which you did identify as one of your comforters, and I ask you as to whether or not this label "Manufactured of new material, filling 100 per cent new dark cotton carded," is true? Is that a true statement?

Mr. Smith: Objected to. That is not cross examination.

The Court: We are inquiring here with reference to the reason-

ableness of the provision of the Pennsylvania statute as to for-
[fol. 56] bidding the use of shoddy, and the practice of this corporation with reference to the labels it puts on the shoddy comfortables might have some bearing upon the reasonableness of the statute, if it should appear that this company was in the habit of mistagging these comfortables.

Mr. Smith: I did not ask him anything at all about tagging.

The Court: You asked him as to the contents of his manufactured product, and it developed in the course of his answer that it was shoddy, and the defendant is now cross-examining the witness with reference to whether or not the statement on this particular comfortable is a correct statement of fact as to the shoddy content of the comfortable.

Mr. Smith: But it is not cross examination. It is a matter of defense.

The Court: We will let the witness answer this question. We would like to get all the light on this subject that we can, and we therefore overrule your objection and permit the witness to answer the question.

(Question read.)

[fol. 57] A. I don't think that any tag placed on any comfortable which undertakes to describe to perfection its filling, can be absolutely, in a narrow sense, true, and I would like the opportunity of stating why.

Mr. Humes:

Q. You may state why.

A. We are up against the proposition of manufacturing in one state goods that go to all of the states. Some have one kind of a provision for marking tags, another another, and another another. Theoretically, to conform to the strict letter of the law of every state, we would have to have perhaps forty-eight tickets on our material, because it is made in immense quantities, and laid away in storehouses, awaiting the season, and then shipped—we know not where it is going to be shipped—to the forty-eight states. Now, here is a quilt apparently filled with what is called a "new dark cotton carded." The material of which that quilt is made as a whole, in bulk, goes by that name, "a dark cotton carded." Now, in this case, as previously tried—and I am glad of the opportunity to set it straight—a quilt was shown, containing a ticket similar to this—a different comforter—where, upon analysis, it had been found to be pretty nearly half wool and the rest cotton. There was no deception in that, and no intention of any deception. We never [fol. 58] know the exact contents and as the material of which that grade was made was called cotton, or whatever it was, we put upon the comforter the lowest value tag, in order not to deceive. Had we known that that comforter contained half wool, or a large percentage of wool, that the grade of which it was a member contained wool, we would have been glad enough to have put on "Composed

of cotton and wool." Wool is a more valuable substance. We chose what we could honestly say was the major part of the filling. It is impossible for us to go further than that, in distinguishing the materials inside of our goods. There is no attempt whatever, and no desire, to deceive people, because it would destroy the prestige of our business. We have a direct pecuniary interest in having the tag as nearly absolutely correct as we can make it.

Mr. Smith: Mr. Palmer, I think you are getting too far away.

Mr. Humes:

Q. As a matter of fact, the contents of this is largely wool shoddy, is it not?

A. I don't think so.

Q. You say it is impossible for you to determine what is used for the filling in this material, the filling in this comforter.

A. I mean, a scientific determination of the percentage is impossible.

[fol. 59] Q. Has that been a condition that has been true in the bedding industry generally for a long period of time?

A. I know nothing of the bedding industry except comfortables.

Q. The comfortable industry then.

A. As I stated before, it is impossible to give a scientific percentage of what is in any comfortable.

Q. Is it impossible——

A. That part is different from that, that part from that, and that from the other, although all made out of one batch of material at one time.

Q. Is it impossible for you to determine whether or not material is old material or shoddy material, second-hand material? Is it impossible for you to determine that?

A. I am not called upon to determine that, because they are kept separate.

Q. Do you mean to say, then that this was new material that was used in this comporter?

A. Unless the comforter is mistagged—I mean, a wrong tag put on it by mistake. I don't say what is in that comforter at all. I don't know.

Q. I ask you if from your experience in the industry whether or not that does not contain largely shoddy?

A. I should think it did.

Q. That was my impression. I call your attention——

A. There is nothing on that tag to show that it doesn't contain [fol. 60] shoddy. There is no disclaimer of there being shoddy there.

Q. You say a statement "Manufactured of new material, 100% new dark cotton carded," would be a proper and truthful lable on a comforter containing shoddy?

A. I certainly do.

Q. I show you Respondent's Exhibit "A," and ask you if that doesn't contain shoddy?

A. I wish to avoid the implication that you are conveying.

Q. Just answer the question, and then avoid the implication with any explanation that you care to make. You can have all the time you want for that purpose.

A. I think that comfortable is completely filled with shoddy made out of new material, but not made of absolutely scientifically 100 per cent cotton material, because it might contain some wool.

Q. If I told you that an analysis showed that that was 52 per cent wool, would that seem unreasonable to you?

A. If you would guarantee that that grade of comfortable continuously contained 52 per cent wool, I would make you a handsome present. They would be worth a great deal more.

Q. That is not an answer to my question. Would it seem unreasonable to you if I told you that an analysis showed this contained 52 per cent?

A. If you found the whole of it 52 per cent wool, I would go back to my factory and *and* find out why they were wasting material like that. It would be worth three times as much. The wool or other [fol. 61] material found in these goods that are marked "dark cottons" are there because we wish to be precautionary and quote in our printed statement the lowest priced material. In general, they don't contain ten per cent of wool, or five. I wish they did.

Q. You made no effort to determine how much wool and how much cotton is contained in these comforters, did you?

A. It would be impossible.

Q. It is impossible to determine that?

A. We call them "all cotton," that being the cheaper material.

Q. So that the person who buys one of these comfortables under the representation that it is 100 per cent new dark cotton carded, buys it under a misrepresentation, do they not?

A. No, they don't.

Q. Isn't it a misrepresentation?

A. Not a misrepresentation with the intention to deceive.

Q. But it is a misrepresentation nevertheless, is it not?

A. If it is so determined, we will simply change the ticket to "wool and cotton," which we will be very glad to do.

Q. Has it been the custom of the comfortable industry, from the time you have been connected with it, to label comforters in the same manner you say these are labeled?

A. Formerly they were not labeled at all. It is only recently that they have been labeled, comparatively recently.

Q. And the occasion for the label has been the enactment of certain laws by the various states, requiring labeling?

[fol. 62] A. The first occasion for the label was convenience on the part of the seller, to have the label affixed by us rather than by him, because we could sew it on in the process of manufacture. I have never heard of labels being attached because there had been deceit in the filling of comforters, in my life. It is so easy to examine and find out. They are only an inch thick. A penknife can show in a minute what is in a comforter.

Q. Isn't it a fact that the Connecticut statute requires the name of the manufacturer to be on the tag?

A. I am ignorant of the Connecticut statute, because it has never been brought to my attention that it required on our part anything to be done. You might ask some of the others here as to that.

Q. You know there is a Connecticut statute, do you not?

A. No, I do not. It certainly can be read if it is here. I have never been questioned by anybody in Connecticut with relation to our comfortable.

Redirect examination.

Mr. Smith:

Q. The Connecticut statute does not apply to comfortables at all, does it?

A. I am ignorant of the Connecticut statute, because it never has been brought up to me that it requires anything.

[fol. 63] The Court: Whatever may be the provisions of the Connecticut statute, this is hardly the way to prove it by this witness.

Mr. Smith:

Q. These tags that Mr. Humes has talked to you about, one of them, for instance, "100 per cent new dark cotton carded."

A. That means dark cotton shoddy carded.

Q. And the use of the words "new material" means that it is shoddy made out of new material?

A. Yes.

Q. And when you speak of new materials in relation to shoddy, you mean these clippings?

A. Absolutely.

Q. Assuming that Mr. Humes did say to you that one of these exhibits was 52 per cent wool, that would mean, would it, that the filling of that comfortable was more expensive and better than the tag would indicate?

A. Yes.

Recross-examination.

Mr. Humes:

Q. These new clippings that you use, this new shoddy, is not sterilized, is it? It is only the second-hand shoddy that you sterilize?

A. We have never considered it necessary to sterilize that. We [fol. 64] are now proceeding to sterilize the whole of it, to try to meet the demands of Pennsylvania, I will say.

Q. You have made no effort to meet the demands of Pennsylvania?

A. Provided the law was changed. We can't meet the demands of Pennsylvania now. Our business is destroyed in Pennsylvania.

Q. As far as shoddy is concerned?
A. Yes.

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HOWARD PALMER, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. New London, Connecticut.
Q. Have you any connection with the Palmer Bros. Company?
A. I am secretary of the company.
Q. How long have you been associated with that company?
A. Since 1911.
Q. Are you familiar with the work that is done in the plant of the Palmer Bros. Company?
[fol. 65] A. I am, sir.
Q. What do you make—what articles?
A. We make bed confortables.
Q. Exclusively?
A. Exclusively.
Q. What quanlity of bed comforters?
A. A wide range of values and qualities. From the low to the most expensive, silk, wool-filled, down-filled, cotton-filled—everything, practically.
Q. What is the range of price of comfortables?
A. In the retail markets, probably from five or six dollars up to sixty dollars.
Q. Five or six dollars what?
A. Apiece.
Q. Surely you can get comfortables cheaper than that?
A. Yes.
Q. That is what I say: what is the range of the price of comfortables?
A. Well, say two dollars.
Q. What is your two dollar comfortable?
A. A shoddy filled comfortable.
Q. And what is your highest prices comfortable?
A. A down-filled comfortable.
Q. What do you mean by "shoddy"?
A. We mean a material which has been spun or woven into a fabric, and then subsequently broken up by machinery and returned [fol. 66] to its original fibrous condition.
Q. Do you use large quantities of shoddy in the manufacture of comfortables?
A. We do.
Q. Do you make it yourself?
A. We do.

Q. What kinds of shoddy do you have?

A. We have several kinds. We have cotton, we have wool, and we have mixed cotton and wool.

Q. Describe the process of making shoddy.

A. I will begin with the old shoddy. The material comes to us in bails containing rags and garments and pieces of cloth of all kinds. It is brought into the sterilizer room, the bales are opened, the hoops taken off, and the material is sorted. We pick out the material suitable for our use and throw it on to a large sheet of burlap. Then the corners are tied together, and it is made into a bundle. Several of these bundles are placed on a carrier, on a carriage of the sterilizer machine, and the carriage is pushed into the cylinder, the doors are closed, and the steam is turned on, and that material is given an exposure of fifteen minutes to live steam, at a pressure of 20 pounds. A temperature is developed in that mass of from 255 to 265 degrees. After fifteen minutes, the steam is blown off, the material is removed from the cylinder and transmitted by a conveyor to the picker room, where the cloth is shoddied up, made into fibres, soft shoddy.

[fol. 67] Q. What is the picker?

A. The picker is a machine. It is a large cylinder revolving at about 1,500 to 2,000 revolutions a minute. The surface of the cylinder is studded with iron teeth, short teeth, and——

The Court: There is no question about the method of manufacture. Is it necessary to have this witness repeat the process.

Mr. Smith: No, I think not.

Q. Then it goes from there into your garnetting machine, does it?

A. The old shoddy goes into the lapping machine. The new shoddy goes into the garnetting machine.

Q. What is your new shoddy?

A. New shoddy is made from clippings from tailoring establishments, which has never had previous use.

Q. What is the price of that shoddy, that you pay for those clippings?

A. I think about four cents a pound now, perhaps a little more.

Q. Do you make all your shoddy, or do you also buy shoddy?

A. We buy some of the higher grades.

Q. What are the higher grades?

A. A bleached shoddy made from cotton threads, at about 18 cents, and a wool shoddy at about $1.38 a pound, made from white wool clippings shredded.

[fol. 68] Q. What are the white wool clippings?

A. You mean, from what materials, what articles are they clipped?

Q. Yes.

A. I think they are underwear clippings. They are produced in the manufacture of the highest grade of underwear, selling at fifty or sixty dollars a suit.

Q. And you pay how much?

A. $1.38 a pound.

Q. Is shoddy a commodity that is known to commerce?
A. Indeed, it is.
Q. To what extent?
A. An enormous extent. The census report for 1920 will give us the exact figures on that, but millions and millions of pounds.
Q. Running into large amounts of money?
A. Yes.
Q. In what branches of trade manufacture is shoddy used?
A. Largely in the woolen cloth manufacture; it is also used in roofing mills for the protection of paper, and it is used in the automobile business in a very large way.
Q. How?
A. For the stuffing of the upholstery of automobiles.
Q. Is it used in the making of hosiery?
A. Yes. It is used in the making of a great many articles of wearing apparel.
Q. What are they?
A. Clothes, hosiery, stockings,, mackinaw coats, sweaters. Those [fol. 69] are all I think of at this moment.
Q. Used in the manufacture of blankets?
A. Largely in the manufacture of blankets.
Q. To what extent do you use shoddy in your business?
A. Last year, about four million pounds or better.
Q. How many comfortables would that make?
A. Roughly, about 600,000.
Q. And does that 4,000,000 pounds include new and old shoddy, shoddy made from new material and shoddy made from old material?
A. Yes, sir.
Q. How cheap are the lower grades of shoddy comfortables?
A. About two dollars apiece.
Q. Is that the retail price?
A. I assume so. It is hard to tell.
Q. What do you sell them for?
A. I can't answer that. We have so many kinds and sizes and shapes. They are all high-priced. That is a round figure, to give a typical general idea.

The Court:

Q. That you sell to your trade or sell at retail?
A. I should say that perhaps would be the retail price.
Q. Your answer then was not responsive to the question of counsel. He asked you at what price you sold them.

[fol. 70] Mr. Smith:

Q. What is the cheapest comfortable you sell that is filled with shoddy?
A. At the present time?
Q. Any time, yes.
A. $1.25, or thereabouts.

Q. Is that retail or your price?
A. That is our price.
Q. I thought you had them down to about nine dollars a dozen.
A. I can't answer that. I don't know.
Q. Have you a trade in shoddy comfortables in Pennsylvania?
A. Not now.
Q. Since this act became effective, it prohibited the sale of shoddy-filled comfortables in Pennsylvania. Did you have before that?
A. Yes; we had a very extensive trade of them here.
Q. What did it amount to, in dollars and cents?
A. In 1923, it was 8,000 dozen.

(Question read.)

A. Approximately $188,000.
Q. You are familiar with the requirements of this statute as to tagging—the Pennsylvania statute?
A. Yes, sir.
Q. What would that provision require you to do, assuming that you did sell comfortables in Pennsylvania?
[fol. 71] A. We would have to attach the official state tag to all merchandise shipped into Pennsylvania.
Q. Would that be difficult or inconvenient?

Mr. Humes: That is objected to.
The Court: We will hear the evidence. The objection overruled and an exception noted to respondent.

(Question read.)

A. It would be both.

Mr. Smith:

Q. What?
A. It would be both difficult and inconvenient.
Q. Describe how?
A. Well, in the beginning, it is troublesome to send several hundred miles and buy the tickets, and await the delay of the state printer. If we would have an order for immediate shipment into Pennsylvania, and have exhausted the previous supply of tags we purchased——
Q. You mean, if you could print the tags yourself you could do it speedily?
A. Exactly. It retards business to have to wait for official tags from a foreign state. There is also the labor and difficulty of specially attaching these tags to the merchandise which is already manu-
[fol. 72] factured and boxed, and located and in storage at a distance from the works. The particular bales which are to be shipped to Pennsylvania would have to be transported back to the mill, a matter of perhaps an eighth of a mile or more, by trucks. The boxes would have to be broken open, the bales cut, and the merchandise taken out, and in some cases unfolded, the tags attached, and the merchandise

all repacked, just to go to Pennsylvania. We are not able to manufacture directly on Pennsylvania orders. In other words, we can't wait until we get an order to manufacture it. We have to keep operating all the year around.

Q. In the other states, you are permitted to print your own tags, are you?

A. In most of the other states of the country we are permitted to use tags which we make and attach ourselves.

Q. There is only one other state which provides that the state furnishes the tag, isn't there?

A. Only one that I know of.

Q. That is what?

A. The state of Maryland.

Q. And that is a statute passed like our statute, after the passage of this statute of ours?

A. Yes.

Q. Assuming that you had to use these Pennsylvania tags, you would have to tag all your goods?

A. We might conceivably have to do that; that is, it would be [fol. 73] striking a balance of convenience and expense. If we had a large business, it might be very inconvenient.

Q. What would be the expense of tagging all your goods?

A. It might be as much as a cent apiece on three million items.

Q. Is that what the tags cost?

A. That is what the Pennsylvania tag would cost.

Q. A cent apiece?

A. Yes.

Q. Then you would have the expense of labor?

A. In addition to that, would be the incidental expense of labor, and so forth.

Q. I show you a comfortable that has been marked Exhibit No. 1, and ask you what that is.

A. That is a crib comfortable with a silk or satin cover, filled with wool shoddy, barred by this law.

Q. What do you mean by "wool shoddy"?

A. I mean the underwear clippings that I spoke of as costing $1.38, shredded up, garnetted into the form you see there.

Q. Where are your factories?

A. In Fitchville, Connecticut; Montville, Connecticut, and New London, Connecticut.

Q. Do you use shoddy in the manufacture of comfortables at all these places?

A. We use it mostly at Fitchville. We use the shoddy such as is in the small comfortable at Montville, and now none at New London. [fol. 74] Q. You don't use any shoddy at New London?

A. Not now, no, sir.

Q. And you use the lower grades of shoddy at Fitchville, do you?

A. Yes, sir.

Q. I show you Exhibit No. 2, and ask you what that is.

A. This shows the two sterilizers at our Fitchville plant.

Q. I show you Exhibit No. 3. What is it?

A. Exhibit No. 3 is the Fitchville mill.
Q. And Exhibit No. 4?
A. Exhibit No. 4 shows the village and surroundings of Fitchville.
Q. Fitchville is a town established by your company, is it?
A. Not established exactly, but largely built up by the company.
Q. I show you Exhibit No. 5, and ask you what that is?
A. This is known to the cotton trade as cotton shod-y, worth about 18 cents a pound.
Q. Do you use it?
A. We do, sir.
Q. Where do you get it?
A. From dealers in cotton products.
Q. What is it made out of?
A. It is made out of cops, which are, I imagine, like a spindle in a cotton mill.
Q. What is the price of such shoddy?
A. About eighteen cents a pound.
Q. And that is prohibited, of course, is it?
A. I understand that that is prohibited under the Pennsylvania [fol. 75] law as shoddy.
Q. How long have you been connected with the manufacture of comfortables filled with shoddy?
A. Since 1911.
Q. And where are you?
A. I live in New London.
Q. And you give your attention to the New London plant?
A. I do.
Q. Are you familiar with conditions at Fitchville?
A. I am.
Q. Are you at the Fitchville plant frequently?
A. Yes, sir.
Q. State whether or not you ever knew of any sickness of any sort at either New London or Fitchville, or any of your plants, traceable to the use of shoddy?

Mr. Humes: Objected to as incompetent for any purpose.
The Court: We will hear the evidence and overrule the objection and note an exception to respondent.

(Question read.)

A. I have not known of any such instance.

[fol. 76] Mr. Smith:

Q. Is it true that there are comparatively few manufacturers of comfortables that use shoddy in the filling?
A. I believe that is true.
Q. Do you know how many there are?
A. I do not know that.
Q. Are you the largest, do you think in the country?
A. I believe that we are.

Q. Where is there any other large manufacturer of comfortables filled with shoddy?

A. At Louisville, Kentucky.

Q. What is the name of the company?

A. I think the Louisville Bedding Company.

Q. Does the use of shoddy in the manufacture of *constables* enable the manufacturer to sell a cheap commodity?

A. It does.

Q. Is there any other filler that can be used that is as cheap as shoddy?

A. There is not, to my knowledge.

Q. What is the next in cheapness to shoddy?

A. Low grades of cotton waste.

Q. And then what?

A. Cotton linters.

Q. Describe the low grades of cotton waste and cotton linters.

A. There is a nap waste which is a very short fiber obtained from a napping machine in the process of putting the nap on cloth. Then [fol. 77] low grade, second cut linters.

Q. What are linters?

A. Linters are cotton fibre removed from the seeds of cotton. When the seeds are first removed from the raw cotton in the gin, the seeds are separated and lint clings to them, and the removal of that fiber gives what is known as cotton linters.

Q. Is there a larger danger to health in the use of this cotton waste and linters than there would be in shoddy?

A. I should think there was.

Q. Why?

A. Because it equally harbors bacteria. It is just as likely to carry bacteria.

Q. Why?

The Court: It looks as though the witness ought to describe the places where linters are made.

A. I am not greatly familiar with that. I can't of my personal knowledge. I purchase linters and discuss them a great deal, but I can tell you only what I know from that source.

Mr. Smith:

Q. Go on.

A. I don't wish to pose as an expert on the production of linters.

[fol. 78] Mr. Humes:

Q. You testified as to what somebody else told you?

A. Partially that, and what I have seen in pictures, and what I have read.

Mr. Smith:

Q. Go on.

A. I have already said that the linters are produced from cotton-seed separated by a cotton gin from the raw cotton. The seed is

then taken to an oil mill, where it is run through revolving saws, and this lint is cut from the seed, and it is then deposited in a receptable, and baled up, and then the bales are stored, pending the accumulation of a sufficient quantity to market. This operation goes on during the cotton harvesting season.

Q. What sort of sterilizer have you at your plants?

A. It is made by the American Sterilizer Company, and the method used is the American Kinyoun Francis Method.

Q. What is the cost of these sterilizers?

Mr. Humes: Objected to as incompetent, irrelevant and immaterial.

The Court: The objection is overruled and an exception noted to respondent.

[fol. 79] A. The cost is about one-eighth of a cent a pound.

Mr. Smith:

Q. I mean, the cost of the machine.

A. $2,600.

Q. That is yours, is it?

A. Yes.

Q. What are the cheaper prices of the machines?

The Court: The test of the cost might probably be the first answer, as to the cost per pound.

A. These machines are produced in different sizes, from about $900 up.

Mr. Smith:

Q. Is $900 the cheapest that you know about?

A. No, sir.

Q. What is the cheapest?

A. I believe you can get brush sterilizers for much less.

Q. I mean, of this particular kind of machine, the American.

A. The cheapest of this particular kind of machine that could be used in this business for sterilizing this material, I would think was about $800 to $900.

Q. What kind did I ask you about?

A. You asked about the American.

[fol. 80] Q. And that is $800 or $900?

A. Yes, sir.

Q. Then the cost of operation is how much?

A. About one-eighth of a cent a pound.

Q. How did you arrive at that? Wouldn't that depend upon the number of pounds that were made?

A. Well, it is determined by a cost investigation, the number of men employed.

Q. You mean, it costs you one-eighth of a cent per pound?

A. Yes, sir.

Q. What is the cost of operating one of these machines?

A. I can't give it to you in any way except that, as we have figured it, in the proportion to the amount of material going through any given time, and estimated our expenses.

Q. That wouldn't be the test of some other plant, a small manufacturer, would it?

A. I don't know.

Q. How do you run these machines, where do you get the steam?

A. The steam is furnished by the boiler of the plant, the power plant.

Q. Is it an expensive operation to run them?

A. No.

Q. It doesn't cost much to make steam, does it?

A. Well, no.

Recess.

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[fol. 81] Afternoon Session

HOWARD PALMER resumed the stand.

Cross-examination (continued).

Mr. Humes:

Q. By the way, this Plaintiff's Exhibit No. 1, is that an article that you have been manufacturing for a long period of time?

A. Yes.

Q. As a matter of fact, isn't that an article you have just commenced to manufacture very recently?

A. No.

Q. How long have you been manufacturing an article of that grade?

A. Probably fourteen months or two years.

Q. That is comparatively recent then, isn't it? Now, as a matter of fact, haven't you commenced to manufacture some of those since the passage of this act, in order to have different grades and the special grade of shoddy, or so-called shoddy, in your business in connection with this litigation?

A. No, sir.

Q. Didn't you state in the Department of Labor and Industry of Pennsylvania, to some of the officers there, that you had just commenced the manufacture of this high-grade comforter?

A. I don't remember.

Q. Now, you say you paid $1.38 for the so-called shoddy in that?

A. Yes.

Q. What does new wool cost you?

[fol. 82] A. Of what grade?

Q. Of a good grade.

A. That still is ambiguous.

Q. The best grade for the manufacture of comforters.

A. I think $1.38.

Q. $1.38?

A. Yes, I think that is the best.
Q. Why do you use shoddy instead of new wool?
A. Because we prefer it.
Q. Now, Mr. Palmer, you say that you used 4,000,000 pounds of shoddy in the manufacture of about 600,000 comforters last year. I believe that was your testimony this morning?
A. Yes.
Q. What portion of that 4,000,000 was of this grade?
A. None.
Q. That was all of the grade such as is in these comforters here?
A. New and old shoddy, what we call new and old shoddy.
Q. What do you call this?
A. We call it new wool.
Q. Do you tag it as new wool?
A. Yes, sir.
Q. If that is new wool, how would the Pennsylvania statute affect you, as far as your right to ship and sell that in Pennsylvania is concerned?
A. It would exclude it.
[fol. 83] Q. Not if it is new wool?
A. It would be shoddy as well. Shoddy has nothing to do with new wool.
Q. In other words, you make this out of what you call shoddy, and then you brand it as new?
A. Yes.
Q. As new wool?
A. New wool.
Q. That wouldn't be a truthful branding, would it?
A. Certainly.
Q. That is on the same theory, is it, that you brand this as new dark cotton carded?
A. No theory about it.
Q. Well, do you have the same definition then for branding that as new wool as you have for labeling this as new dark cotton carded?
A. I should say so. They are both new materials.
Q. And both labels would be false, would they not?
A. No, sir.
Q. Because if this is shoddy it isn't new, is it?
A. Yes, sir, it is new.
Q. What constitutes a thing new?
A. That is what I would ask to have interpreted under the law.
Q. It is not the purpose of the Federal Court to interpret this law. That is a matter for the state courts to do. You have seen [fol. 84] those labels without picking them up individually, Respondent's Exhibits "A," "B" and "C." Those are your comforters, are they not?
A. I haven't examined them.
Q. Will you examine them?
A. I think they might be.
Q. You think they might be?
A. Yes.

Q. Don't you know that they are?

A. No, sir; how could I know?

Q. Who is in a better position to know than you? Is there anyone connected with your factory who is in a better position to know?

A. Certainly.

Q. Who?

A. The man that turns them off the machines. I am not familiar with the three million items we turn out each year.

Q. I show you Respondent's Exhibit "A" and ask you if that is filled with shoddy?

A. It is filled with garnetted new clippings.

Q. What are garnetted new clippings composed of?

A. Composed of clippings from tailoring establishments, run through a garnet machine into that form.

Q. Is the garnetting process different from the process that is used with the blanket that is label "shoddy"?

A. Judging by the material, I would say it was a different process.

[fol. 85] Q. What way is it different?

A. That is filled with a lap.

Q. What is the distinction between the garnett and the lap?

A. The lap is made on a lapper, which was described this morning. The garnetted filling is made on a garnetting machine with many-toothed cylinders.

Q. And one is ironed out on this roll flat, in a flat form, while the other is kind of fluffed up with air in it, to appear more fluffy?

A. That is true.

Q. But the same material could be used with either process, could it not?

A. It could be done, yes.

Q. What is the difference between the material in this shoddy quilt and the material that you have labeled as "new dark cotton carded" in this?

A. The difference is in the original shape of the material, if it is the distinction that I am trying to bring out. The new shoddy is made from new clippings, garnetted. The old shoddy is made from old rags, lapped, picked and lapped.

Q. Now, as a matter of fact, isn't the question of lapping or garnetting dependent upon the length of the piece that you grind up, as to whether you have fibre enough or long enough threads in it to garnet satisfactorily?

[fol. 86] A. No.

Q. Can you give us the relative number of these 600,000 comforters that you say were manufactured from shoddy the last year, that goes into the different grades of comforters? How many of them were of the grade second-hand shoddy like this, and how many of this variety, and how many of the other varieties of shoddy comforters that you used?

A. In 1923, there were practically 5,000 dozens of comfortables of the new shoddy sold in Pennsylvania.

Q. That would be in this style (indicating)?

A. Of the new dark cotton carded.

Q. Similar to Respondent's Exhibit "A"?

A. It is what we call new shoddy. I am not referring to these exhibits.

Q. It is what you sell as 100 per cent new dark cotton carded?

A. Yes, it was sold then. Of the old shoddy, about 3,000 dozen.

Q. That is what you label as second-hand shoddy?

A. That is what we label as second-hand shoddy.

Q. What other grades?

A. That is all.

Q. Are those the only grades of shoddy comforters you put out in Pennsylvania?

A. Of that class.

Q. And they are the classes that compose these four million pounds of shoddy that you have testified to?

[fol. 87] A. Yes, sir.

Q. I believe you testified this morning that the clippings from which you made the shoddy cost you about four cents a pound?

A. Yes, sir; in that neighborhood, on the average. We have to speak roughly, you know.

Q. As a matter of fact, new linter- only cost between four and five cents a pound, do they not?

A. Linters can be purchased for that.

Q. Doesn't the market price stay between four and five cents?

A. Are you speaking of linters suitable for comforters?

Q. I am speaking of all linters, the market price of linters.

A. There isn't any such thing.

Q. There isn't any such thing as what?

A. As the market price of linters.

Q. How do you determine the price of them, how do you arrive at a price?

A. There are perhaps four or five grades of linters, each of which has a different price, and each of which fluctuates at different times. It is impossible to give a general answer to your question.

Q. What are the various prices of these various grades of linters then?

A. 4¾, 5, 5½, 6½, 7½, 8½, 9½, 10½, 11½, and up to as high as 22 cents.

Q. What you buy, and isn't the market price of linters adaptable [fol. 88] to use in comforters between four and five cents? Can't you buy it for that price?

A. Linters could be purchased for that price, yes.

Q. Are they suitable for the manufacture of comfortables?

A. For us?

Q. Yes.

A. No.

Q. Why?

A. Because they are too short in their fibre to stand machine treatment.

Q. Your shoddy doesn't stand machine treatment, except to pick it out?

A. Yes, or lapping.

Q. That is only manufacturing process, isn't it?

A. No, it is the making of the lap, the web.

Q. Have you ever made any investigation, or undertaken to use linters in the manufacture of comforters?

A. Yes, sir.

Q. You have?

A. Yes.

Q. Do you manufacture any from that material?

A. Yes, sir.

Q. Now, Mr. Palmer, may I ask, do not the laws of Connecticut require you to label commodities manufactured there?

A. You must be specific. I am not an expert on Connecticut law.

[fol. 89] Q. I asked you if the laws of Connecticut require you to label your comforters?

A. You said materials.

Q. I beg your pardon. Answer the question.

A. Only down quilts.

Q. What are bed muffs, under that act?

A. I would sidestep that, on the same basis that I am not an expert on the meaning of that act.

Q. You are an expert in the bedding business, aren't you?

A. I don't know what a bed muff is.

Q. Do you know how the authorities of the State of Connesticut define it, and what recognition it may have in the bedding industry?

A. I do not.

Q. It is necessary for you, in the conduct of your business, to determine the laws of the several states, with reference to the manufacture and sale of your materials, is it not?

A. To determine the law?

Q. Yes.

A. I wouldn't say so, no, sir.

Q. You are not concerned then with what the laws of the several states are then?

A. Yes, sir.

Q. Who has charge of the question of labeling your blankets or your quilts, so as to conform to the laws of the several states into which they are shipped?

[fol. 90] A. I do it in so far as I can.

Q. If you do it, you ought to have some knowledge of the laws of the different states.

A. I have read the laws.

Q. Do you mean to say that this comforter is truthfully labeled, and correctly labeled, with reference to the states mentioned on it?

The Court: You are referring to what exhibit?

Mr. Humes: Exhibit "A."

A. I wish the question could be made a little clearer.

Mr. Smith: Answer that question.

A. To the best of my knowledge and belief, it is truthfully labeled with reference to the states mentioned on it, or was so, at the time it was so labeled. He hasn't brought out the time it was labeled, which is most material.

Mr. Humes:

Q. I was desirous of doing that, but you displayed so little knowledge of the manufacture of these particular commodities that I didn't undertake to do it.

A. When was it purchased?

[fol. 91] Q. They have been purchased during the last six months, all of these, at various times?

A. That doesn't help me in answering the question.

Q. What do you have to get besides that?

A. I have to know the time the ticket was attacked to the comfortable.

Q. I can't tell you that.

A. Isn't it proper to know that?

Q. I thought you possible would be able to tell that yourself. May I ask you this: in these Exhibits "A," "B" and "C," the label says, "This article is made and labeled as required by the laws of California of June 7, 1915, Massachusetts, Minnesota and other states." Now, why was the date June 7, 1915, inserted after California?

A. To comply with the law which specified a definite form.

Q. Isn't it a fact that there was a new law passed that repealed the old law in California, and that your label shows a compliance with an Act that is no longer in force in that state?

A. That is why I am saying it is important for you to say when the label was put on there, because it did comply with the law of 1915.

Q. But it doesn't comply with the law as it exists today, does it?

A. I don't know.

[fol. 92] Mr. Smith:

Q. Do you know what the California law today is?

A. I can testify to it from this copy here.

Q. That doesn't relate to comfortables at all, does it?

A. It mentions comfortables, but there are certain exceptions in the law which do not apply to comfortables; that is, comfortables are excepted from the operation of certain of the paragraphs.

Mr. Humes:

Q. The laws of California require the approval of the process of sterilization, do they not?

A. You have it before you there.

Q. I am asking from your knowledge of the business now.

A. I can't answer.

Q. If the laws of California do require that sterilization by a

process that is approved, you comply with that requirement by securing the California approval of your process of sterilization?

A. If we had secured the approval I would say so, yes.

Q. There is no excuse for that remark. I am asking you if you have the approval of the state of California on your process of sterilization?

A. No, sir.

Q. Have you the approval of the state of Massachusetts or Minnesota?

[fol. 93] A. No, sir.

Q. Have you the approval of the state of Iowa?

A. No, sir.

Q. Have you the approval of the state of New York?

Mr. Smith:

Q. Do these states require approval?

A. Not as far as I know. I never heard of it.

Q. Look at the law of California, if you have it, and see if it requires any approval?

A. It requires sterilization by a reasonable process approved by the State Board of Health of the State of California.

Q. What act is that?

A. This is an act called the California Mattress Law; not more accurately defined than that.

Mr. Humes:

Q. Look at the end of the act?

A. That applies to the California Pillow Law only.

The Court: In the consideration of the instant case, what have we to consider with reference to sterilization? As we recall the Pennsylvania statute, it forbids the use of shoddy entirely. Are we correct as to that?

[fol. 94] Mr. Smith: Yes, sir. One of the points we made before Your Honor was that it was a discrimination to prohibit the use of an article that might be properly sterilized.

Mr. Humes:

Q. How does it come that on the label on Respondent's Exhibit "A," you include the state of Iowa, while on the second-hand shoddy label, you do not include the state of Iowa?

A. I simply presume it was a different time of manufacture; that when it was included on one, it was proper to be included on it, and when it was omitted on the other, it was proper to be omitted. These laws are fluctuating and improvements are being made to them every day. It isn't always possible to keep up to the minute, particularly on goods that have been made and stored for a year.

The Court:

Q. Are those labels dated?
A. No, sir.
Q. Are there any marks on them from which you can state when they were prepared?
A. No, sir.

Mr. Humes:

Q. Now, Mr. Palmer, you say you buy a large amount of rags that [fol. 95] are used for the purpose of grinding up and making shoddy out of them?
A. Yes.
Q. You buy a lot in foreign markets, do you not?
A. Yes, sir.
Q. What percentage comes from foreign markets, do you suppose?
A. I couldn't answer that. I really don't know.
Q. I mean, just in a general way. You have an idea whether it was five or fifty, or seventy-five per cent, haven't you?
A. No, I couldn't tell you that, but I think it would be as much as 25 per cent at some times, maybe more. We don't import direct.
Q. Where is the rest bought?
A. The rest is bought from the regular rag dealers in the different cities.
Q. And you buy them wherever you get the best bargain?
A. Not necessarily that, no. We buy where we feel we can get the best material for our purpose.
Q. When this stuff comes to you, it comes in bales, doesn't it?
A. Yes, sir.
Q. And you simply open those bales out and dump the contents of them into these sterilizers? Now, I am speaking of your practice.
A. They are placed in the sterilizers, yes, after they are opened.
Q. And whatever comes in the bale goes into the sterilizer?
[fol. 96] A. No, sir. They are assorted. They are assorted before we buy them, and they are afterwards.
Q. How do you know?
A. They are graded that way.
Q. They are assorted by having taken out of them all of the larger pieces that will make a larger thread that can be used in the textile industry?
A. You are speaking of the oridinal sorting?
Q. Yes.
A. I assume they are sorted on the basis of their value, the choice ones containing the most wool, and therefore being salable for a greater price, and are put into their own packing and sold to woolen mills, and those that contain too much cotton for a woolen mill to take are packed separately.
Q. The size of the clip has a great deal to do with the matter of the place it is placed in the sorting?
A. No, not to my knowledge. I think that would only be im-

portant where the size might be more suitable for another machine. But in our business there is no reference to that.

Q. When these goods are sorted, where are they sorted—right convenient to your sterilizer?

A. Yes, right near the sterilizer.

Q. What is done with the material that is taken out of the general stock?

A. It is thrown out and charged back to the man that shipped it.

[fol. 97] Q. It is thrown away?

A. Yes, sir.

Q. Have you a record of how much was thrown away and charged back during the last year?

A. Not here, no, sir.

Q. Have you an idea of about what it amounts to?

A. I couldn't say.

Q. Isn't it a fact that practically everything that comes in those bales is dumped into the sterilizer?

A. A large share of it certainly is. We wouldn't buy it in the beginning, if it wasn't suitable, so far as it could be made so.

Q. That material contains almost every conceivable kind of cloth, doesn't it?

A. It contains all the common cloths in use.

Q. Burlap and gunnysacking?

A. No; that is not cotton rags.

Q. Aren't there things besides cotton rags that get into the shoddy?

A. Get into what we buy?

Q. Yes.

A. Things that are not what—that are not cotton rags?

Q. Yes.

A. Yes.

Q. Don't you have gunnysacking and burlap and stuff of that kind?

[fol. 98] A. No. Buttons and things of that sort get in, things that have to do with clothing. Then there might be a little burlap lining or stiffening, such as is used in a coat.

Q. I will ask you, from your knowledge of the industry, it is possible with that material, coming from Respondent's Exhibit "C," to determine the prior use that it has had and the prior character of the material?

A. To a certain extent, yes.

Q. It is?

A. Yes.

Q. Can you tell from that what any of it has been before, what it has been used for?

A. It would take time. I can't tell right offhand.

Q. Can you tell by any ordinary inspection?

A. I could, with a microscope.

Q. Will a microscope disclose the use that it has had before?

A. To a certain extent; not the whole use.

Q. I show you a sample from Respondent's Exhibit "A," and

ask you if it is impossible by inspection to determine the former use of that material?

A. You can tell it has been machined and to a certain extent what machines it has been through. If you mean use, you haven't made very clear what you mean by use.

Q. I mean, use in the ordinary sense of the term use, when you use something. You know what the term means. All material that comes to you has been used for some purpose, hasn't it?

[fol. 99] A. Yes, sir.

Q. The machining process has nothing to do with that use, has it? That is a process, that isn't a use. Now, I am asking you if you can determine from inspection, or if anyone can, the prior use that that material has had?

A. No, indeed.

Redirect examination.

Mr. Smith:

Q. Mr. Humes has asked you as to whether or not the label on Exhibit "A" complied with the California law. The California law doesn't relate to shoddy made from new materials, does it?

A. As I read it, no, sir.

Q. The label on Exhibit "A" reading "Manufactured of new material fillings 100 per cent new dark cotton carded" would comply then with the California law, as you understand it?

A. At the time. This is 1915. In 1921, it was amended. Now, I can't say when that was put on there. The earlier law——

Q. I don't care whether it is the act of 1915 or 1921. The statute don't require the sterilization of shoddy made from new materials, does it? Read that paragraph to the stenographer, so we get it in there.

A. Section 2, paragraph 1.

Q. "Any material known as shoddy and made in whole or in part from old or new clothing, carpets or other fabric or material previously used, or any other fabric or material from which shoddy is [fol. 100] constructed * * *, unless any and all of said materials have been thoroughly sterilized and disinfected by a reasonable process approved by the State Board of Health of the State of California." If the statute don't require the sterilization of shoddy made from new material, you don't have to get the approval of the Board of Health of California, do you?

A. No, sir.

Recross-examination.

Mr. Humes:

Q. You have seen these Respondent's Exhibits "A" and "B", labeled "New dark cotton carded 100 per cent." That is not a correct and truthful labeling of that article, is it?

A. I think so, yes.

Q. Is that 100 per cent cotton?

A. I don't know, but it may have some wool in it, as I explained this morning, and the reason for using that designation is simply that we buy these cotton rags. We get it graded and sold as cotton rags. Now, 75 to 90 per cent of them are that, and they vary. There is no way of telling, and we simply describe the lowest element in there, and if the purchaser gets the wool, he is all to the good. It would be impossible to analyze each lot of stuff and show just the percentage of cotton and wool in it; that is, as a manufactur-
[fol. 101] ing proposition. As far as the 100 per cent is concerned, that is intended to indicate that the material in the comforter is all of one kind; that is, it is all of this kind of stuff.

Q. All new dark cotton carded?

A. Yes.

Q. Isn't there, as a matter of fact, a lot of wool shoddy in that material?

A. I presume so; I don't know.

Q. That is a shoddy quilt?

A. That is new cotton carded. That is the trade name for our filling of that comfortable.

Q. Whose trade name?

A. Ours.

Q. It isn't a trade name that is known in the trade?

A. It certainly is.

Q. Does anyone in the trade know that is a trade name, except you?

A. They know what we sell under that brand.

Q. Would you say that a consumer going to buy one of your blankets and looking at that label, would suspect that that was filled with shoddy?

A. I don't know whether he would or not.

Q. Would he?

A. I can't tell what he *sy*spects.

[fol. 102] Q. It is filled with shoddy, isn't it?

A. It is filled with new dark cotton carded. It is new shoddy.

Q. It is shoddy, though?

A. It is a grave question whether it is proper to call it shoddy at all.

Q. It is shoddy, and it is far from being 100 per cent cotton, isn't it?

A. I have no means of knowing.

Q. Where do you get the rags that go to make up that class of quilt?

A. From the ordinary rag dealers, that is, the trade, the large jobbers of rags, selected packings.

Q. Do you make any investigation or examination of them, or do *they* take what they ship you as rags of a given grade?

A. We certainly have to investigate them very closely when we open them, and any packer that is not living up to our specifications is discontinued.

Q. You prescribe specifications for that?

A. We certainly do.
Q. Have you got those specifications?
A. I have not.
Q. Can you give them to us?
A. I can tell you some.
Q. Can you produce them before we are through with this trial?
A. We have no printed specifications, no.
[fol. 103] in what form do you put them out?
A. In oral form, tell them the things that we want.
Q. Do you have your correspondence about your specifications, with the people you are contracting with?
A. We buy to a great extent over the telephone.
Q. And you haven't specifications in letter form to any of these people?
A. I don't recall any; I don't think so. We do it mostly by telephone.
Q. How many pounds of that grade of shoddy do you buy in a year?
A. Which grade?
Q. The grade that you use as new dark cotton carded?
A. If you simply refer to the figures I gave you a while back, that will answer the question. Sometimes we have more, of course, than that actually made up in any one year, but I will give you the general figures.
Q. The only figures you gave me were for Pennsylvania?
A. You meant everywhere?
Q. Yes.
A. We have another of our witnesses here who can tell you that. I can't answer that right offhand.
Q. Can you furnish us, during the progress of this trial, the specifications you have for your shoddy material to the people you are buying from?
A. I can tell you now.
[fol. 104] Q. Tell us as far as you can.
A. First, we buy cotton rags. Now, that excludes lead pipe, junk, and any kind of foreign substance that doesn't come under the classification.
Q. Is that about the only thing it excludes, lead pipe and junk?
A. I am simply taking that as a typical instance. We hold them strictly to the delivery of cotton rags.
Q. What kind of cotton rags—any cotton rags?
A. No; certain classes of cotton rags are excluded, like garage cloths, wiping cloths, any shirts—what I mean is white shirts, white cotton shirts.
Q. You exclude those?
A. Yes. They exclude them themselves, because in many cases they are of greater value elsewhere, but we would exclude them too, because what we want is the clothing material with body to it.
Q. Proceed with the specifications of these materials.
A. Carpets, shoes, anything of that sort, foreign material, things that cannot conceivably be included under the head of cotton rags.

Anything that is unpleasant to the eye would be picked out by our sorters.

Q. I am talking about the specifications that you describe to these people that you buy from?

A. I have covered it fairly well. Offhand, that is probably the substance of it.

Q. Then, as I get it, that is as to cotton rags?

[fol. 105] A. Yes.

Q. You permit other things than cotton rags, do you?

A. No, they are supposed to be excluded——.

Q. All wool is excluded?

A. No, wool isn't excluded.

Q. In your specification you said you require cotton rags, except lead pipe, shirting, shoes, and foreign matter.

A. Yes.

Q. Are woolen rags permitted?

A. Woolen rags, articles containing a certain percentage of wool, are well understood to be includable under cotton rags. Rags that are 50 to 75 per cent cotton are classed as cotton rags.

Q. Is there any limitation upon the kind of woolen rags that can be delivered to you?

A. I don't know just what you mean by that.

Q. I am talking about your specifications.

A. Do we deliberately try to exclude wool—is that it?

Q. Yes.

A. No, we do not.

Q. You have no limitation upon the kind of woolen rags that can be shipped to you under your contract of purchase?

A. I should say not, offhand. If is perfectly suitable material as long as it is a woolen rag.

Q. Now, this material when it comes in is ground up to make this material such as is contained in Respondent's Exhibit "A"?

[fol. 106] A. No. This material I have been describing to you is second-hand and shoddy material.

Q. That isn't what I asked you about at all. I asked you about the specification for the material that was used to make up the new dark cotton carded comforter. That is what I asked you. Didn't you so understand it?

A. No, sir. You asked me how we purchased our cotton rags that were used in the shoddy and sterilizing process.

Q. I presume, then, the specification you have just given is for the second-hand shoddy?

A. Yes, sir.

Q. Now, give us the specification for this new dark cotton carded material?

A. The specifications for that are new clippings. They are the element of previous or lack of previous use, is the thing on which they are bought, that is, for our clippings from the large wholesale tailoring establishments, like Hart, Schaffner & Marx. They put a bolt of cloth on a desk and cut out a suit, and the trimmings

that they cut off constitute the material that we refer to under that designation.

Q. Is there anything else included?

A. You mean, any other material?

Q. Yes.

A. No, that is our specification.

Q. That is your specification?

A. Yes.

[fol. 107] Q. Do you buy that direct from the tailors, or do you buy it from junk dealers?

A. We buy it under the designation of "new clips," that is the way we buy it.

Q. But you don't buy it direct from the tailoring establishments?

A. We buy it from the rag trade, the collectors and wholesalers of this material. It is a great trade in itself.

Q. Are you familiar with the way these tailors' clips are handled?

A. How and where?

Q. In the process of any tailoring establishment, and between that time and the time they reach you to be ground up into shoddy, are you familiar with it?

A. I just know the way they are made and baled up and classified and shipped.

Q. You know, then, that these clippings from the tailors' table are swept off on the floor, and accumulate on the floor, and are swept up with spittle and cigar stubs and everything?

A. I should think that would be very poor policy.

Q. Answer my question either yes or no. Isn't that a fact?

A. I can't answer; I don't know.

Q. You know that the junk dealers gather this stuff up and store it in all sorts of unsanitary places, waiting for the market to sell it on?

A. I don't know that.

Q. Do you call that material new material, because it has never been actually worn by somebody?

[fol. 108] A. I haven't said that.

Q. Why do you call it new material?

A. Because, as I have explained, it comes from new cloth that has never been used or worn by anyone.

Q. In other words, it is the waste of a manufacturing process?

A. It is the waste of a clothing manufacturing process.

Q. And that is the material that makes up this new dark cotton carded comforter of yours?

A. Yes, sir.

Q. You grind that material up into shoddy, do you not?

A. It is shredded.

Q. And you sell it by labeling it new material? Or you label it new material?

A. It is labeled "filled with new material," "new dark cotton carded."

Q. Now, are the same tags in use now by your company that are

attached to those Exhibits "A," "B" and "C," or have you secured a new label of some kind?

A. We change labels all the time.

Q. Have you the labels that you use now?

A. No, sir, I haven't got them here.

Q. How recently have you changed them?

A. A little more specific, please?

Q. How recently have you changed your form of label?

A. What form of label?—on these comforters?

Q. Yes; Exhibits "A," "B" and "C."

[fol. 109] A. We made a change in the middle or early part of last year. We made a change prior to that. Q. The early part of last year, that is, 1924?

A. Yes.

Q. Is this the tag that was used prior to that change, or does that incorporate that change early last year?

A. That tag was used prior to the change I am speaking of.

Mr. Smith: Which one is that?

Mr. Humes: Exhibit "A."

Mr. Humes:

Q. Isn't it a fact that practically all of the state laws of the states that have legislated upon the subject require the tag to contain the name of the manufacturer?

A. It is usually stated in the alternative. Only two states do I know definitely to require the name of the manufacturer alone, or in addition to the vendor. I think in the majority of instances it is alternative. You may use either name.

Q. What two states have you in mind?

A. Pennsylvania and Maryland.

Q. You say they are the only ones you can think of that require the name of the manufacturer?

A. Yes, sir; that is all I can think of.

Q. Doesn't the Iowa law require it?

[fol. 110] A. I would have to refer to that to see. I have no present recollection.

Q. That is one of the states mentioned on your tag. I ask you if it isn't?

A. The Iowa law was passed April 16, 1923. My impression is that tag is prior to that time.

Q. Isn't it a fact that the large amount of your business in this shoddy material, that these materials are sold as manufactured by some jobber or dealer other than by yourself?

A. I have no means of answering that, you see. How could I answer that?

Q. Don't you tag them?

A. We put the tag on and sell them——

Q. I am not suring a name definitely, but we will say that John Jones is a jobber in the business. Don't you manufacture these

comforts and put tags on them and show that John Jones, the jobber was the manufacturer, as a part of your contract with him, to aid him in his jobbing business?

A. Do you mean, have we ever done such a thing, or what?

Q. Haven't you ever done such a thing?

A. In one of two instances, where we have manufactured for a special order, we have done that.

Q. Isn't that a common practice?

A. No, I wouldn't say so, in our business. It is a very unusual practice.

Q. Have you ever printed a label and attached it to your comforts, [fol. 111] showing your own name as the manufacturer of the article?

A. Yes, sir.

Q. In shoddy material?

A. This was quite a number of years back. I can't answer specifically.

Q. You haven't done it in recent years?

A. Not to my knowledge, no.

Q. But in recent years, you have manufactured comforts with the names of other persons shown as manufacturer, for their accommodation?

A. We print their name on the ticket. We don't make any statement about a manufacturer.

Redirect examination.

Mr. Smith:

Q. You said, referring to the filling in Exhibit "A," that you didn't think it ought to be classified as shoddy?

A. Yes, sir.

Q. It comes within the definition of shoddy in the act, does it not?

A. In Pennsylvania? Oh, yes, indeed.

Q. Is it not recognized as shoddy in the trade?

A. I think there is a difference of opinion about it. I think there is a good deal of confusion, from taking a form of material and giving it a name, particularly with regard to the second-hand *m*ature [fol. 112] of it, that is, the traditional meaning of "shoddy" is an old material, perhaps a little disreputable. In those times the shredded form of new material was not known, wasn't utilized much

Recross-examination.

Mr. Humes:

Q. As I understand it, you don't sterilize this new material?

A. At present, no.

Q. Is it not sterilized?

A. No.

Q. What would you call new material, the dealers' clippings, that come into this 100 per cent dark cotton carded—is not sterilized?

A. It is not at present sterilized.

Mr. Smith:

Q. In reply to Mr. Humes' question, did you say that you had put the name of somebody else on your tags as manufacturer, or not?
A. We have.
Q. For what?
A. We have put the name of somebody else on the ticket in the sense of "Manufactured for So-and-So."
Q. Did you say "manufactured for," or did you indicate that that person was the manufacturer?
[fol. 113] A. No, we say "Manufactured for So-and-So."
Q. But you never put on any tag the statement that somebody else had manufactured the goods, did you?
A. No.
Q. Has your process of sterilization been approved by New York?
A. It has.
Q. How?
A. The specifications and description of the plant were submitted to the Industrial Commission, and we received their approval.

Mr. Humes:

Q. You have never submitted any specifications for sterilization, or your plan of specification, to the Pennsylvania authorities, have you?
A. No, sir.
Q. To what states besides New York have you submitted them?
A. None.

[fol. 114] FRANK PALMER, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. Fitchville, Connecticut.
Q. What is you business?
A. I am in the mechanical department.
Q. What do you mean by the mechanical department?
A. I have charge of the machinery.
Q. What is your business, what do you do?
A. I have charge of the machinery.
Q. You have charge of the machinery?
A. Yes.
Q. What do Palmer Bros. make at Fitchville?
A. Comfortables.
Q. With what class of filling?
A. Shoddy.

Q. Do you make a great many comfortables at Fitchville with the shoddy filling?

A. Yes.

Q. Do you have charge, or do you know of the process of sterilization there at Fitchville?

A. I do.

[fol. 115] Q. What is it?

A. It is a steam sterilizing process.

Q. Describe it, please.

A. The rags are put into the sterilizer, the doors closed, and a vacuum of ten inches is drawn. The live steam is admitted under a pressure of 20 pounds, and kept under that pressure for fifteen minutes. When the pressure is reduced to zero, the stock is taken out. In the meantime, the jacket of the sterilizer is kept hot by 80 pounds of steam.

Q. How do you arrive at the vacuum? How do you know the vacuum is there?

A. The vacuum is told by a gauge on the outside.

Q. How do you know the temperature?

A. We have registering thermometers that we put into the two end sections, in the middle of the sacks, that register the maximum temperature.

Q. What is the heat?

A. The heat varies from 254 to 268 degrees.

Q. How long do you leave the materials in there?

A. They are in there fifteen minutes under pressure.

Q. How long does it take to get your pressure?

A. It takes about eight minutes from the vacuum.

Q. Then how long after you take the pressure off before you take it out?

A. They are taken out immediately after the pressure is reduced.

Q. Do you have some little test vial or phial, or something?

[fol. 116] A. Yes.

Q. What do you call it?

A. A sterilizer control.

Q. What is that?

A. It is a little pellet in a glass tube that melts at 250 degrees, never under.

Q. Have you one?

A. I have one.

Q. It is just a little glass tube?

A. Yes.

Q. What is in it?

A. Some composition.

Q. What is it?

A. I don't know what it is.

Q. What happens to it?

A. It melts and turns red at 250 degrees, but not under.

Q. You put a thermometer in each end of the——

A. Each end, because it is the coldest part.

Q. And if you get the heat on those thermometers, your are sure of it?
A. Yes.
Q. How long have you been at Fitchville?
A. Twenty-eight years.
Q. How extensive is the plant there at Fitchville?
A. It is about 500 feet long, the plant itself.
Q. How many men do you employ?
[fol. 117] A. That varies greatly. Running full, we would probably employ 500.
Q. Do they live there?
A. A good many of them live there.
Q. In Fitchville, I mean?
A. Yes, in the village; not all of them.
Q. During the time that you have been there, have you ever known of any sickness of any sort that was traceable to the handling of shoddy?
A. I never have.
Q. Have you ever had any epidemic there in Fitchville?
A. Nothing but the "flu."
Q. Before you put the rags into this sterilizer, is there any process of assortment?
A. Yes, the rags are sorted after the bails are opened.
Q. What do you put aside?
A. All manner of stuff that we can't pick.
Q. What is that?
A. Rubbers, some belting sometimes, hats are too hard,—rope.
Q. Where do you get these rags?
A. I am not familiar with that part of the business.

Cross-examination.

Mr. Humes:

Q. But no soft material that can be ground up is taken out in this sorting process, is it?
[fol. 118] A. Well, that doesn't come under my heading.
Q. You are testifying?
A. Just what I see.
Q. You haven't seen them take out anything except hard substances, have you?
A. I can't say.

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J. G. KAHL, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. Ben Avon, Pa.

Q. What is your business?
A. Wholesale drygoods.
Q. With whom are you connected?
A. Arbuthnot-Stevenson Company, Pittsburgh.
Q. How long have you been with them?
A. Thirty-four years.
Q. Does Arbuthnot-Stevenson do an extensive business?
[fol. 119] A. Yes, I would say they are the largest wholesale distributors in Western Pennsylvania.
Q. Do they handle comforters and bedding?
A. Yes, in quite a large way.
Q. Have you ever dealth with Palmer Bros. Company?
A. Yes, for the past twenty or twenty-five years, of my own knowledge; prior to that, my predecessor I think did.
Q. You have handled their comforters that are filled with shoddy?
A. Yes.
Q. Are there different grades of *customers* shoddy-filled?
A. Well, I am not familiar with the contents of all grades, but *but* we class them as different grades.
Q. Do you handle different classes?
A. We have carried practically all the grades that Palmer Bros. make, in seasons gone by.
Q. Is there an extensive trade in these cheaper comforters filled with shoddy?
A. There is with us a very good trade.
Q. And all over Western Pennsylvania and into the adjoining states?
A. Yes. Our business is confined largely to Western Pennsylvania, Eastern Ohio, West Virginia and part of Maryland.
Q. Who buys these cheaper comforters?
A. The so-called foreign trade use more of the cheaper numbers, and what you might term the poor trade, the working men possibly, who look for a low-priced bedding.
[fol. 120] Q. What are the prices of these cheap comforters?
A. Well, they will vary. This past season, the year of 1924, I believe the Palmer list started around fourteen dollars a dozen for the lower grade. I have a price-list with me.
Q. Look at it.
A. The cheapest one that they carried in the year 1924, on the list of July 2nd, was $13.75 a dozen. From there up.
Q. And you would sell that at a little higher rate, I suppose?
A. We add possibly 10 to 12½ per cent profit.
Q. What does the retailer add to that?
A. That would vary. The retailer's profits don't, as a rule, follow any particular scale. That would vary. I would say the average retailer would add anywhere from 25 to 50 per cent profit.
Q. Does this cheap shoddy-filled comforter fill a need in commerce?
A. In my judgment, it does.
Q. What is the next thing in the order of cheapness, to these shoddy-filled comforters?

A. There isn't anything, unless you went to a very much cheaper grade of comforter.

Q. What would that be?

A. According to this list again, the cheapest thing that we are permitted to sell under this new Bedding Law, as I understand it, would cost us $29.75 a dozen.

Q. What is that?

[fol. 121] A. That is filled with what the manufacturer terms as a new white carded cotton filling.

Q. That isn't a shoddy?

A. Not to my understanding.

Q. You are not permitted to sell shoddy in Pennsylvania?

A. According to my interpretation of the law, we are not permitted to sell it.

Cross-examination.

Mr. Humes:

Q. I will ask you if that is the comforter you have just been testifying about (indicating)?

A. There are cheaper grades than this.

Q. I am asking if this is the new dark cotton carded that you said was the cheapest you could sell?

A. The one I stated, the lowest price, $29.75?

Q. Yes.

A. No, I think this is the lowest grade. I don't know without tearing it apart.

Q. You do a jobbing business?

A. Yes.

Q. You sell very largely to retailers?

A. Yes.

Q. Throughout this part of the country?

A. Yes.

Q. May I ask you if the only objection to this law isn't the fact [fol. 122] that it requires the manufacturers' name on the tag?

A. I wouldn't think so. I don't know that we would have any objection to the manufacturer's name being on the tag.

Q. Isn't that objected to by jobbers and wholesalers?

A. It is, to a degree, and yet that still wouldn't prevent our selling the goods if his name was on it. We don't like that.

Q. Did you ever have any of these comforters made for you with Arbuthnot-Stevenson Company noted as the manufacturer on it?

A. No, sir.

Q. Can you identify this as one of the comforters that was sold by you to a man by the name of Wallace, of Bridgeville?

A. We may have. We have a customer by that name. We carried this class of goods prior to this law.

Q. You sell to the Fair Store in Uniontown, too?

A. We do, yes.

Q. And they handle this line?

A. Yes.

Q. You have sold them comforters?
A. We have, for a number of years past. They sell in a large way to the foreign population that buy this class of stuff.
Q. Mr. Wallace, at Bridgeville, is a customer of yours?
A. I think so. His name is familiar. I wouldn't swear to it.

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[fol. 123] JAMES A. NEWLANDS, a witness called on behalf of plaintiff, having been duly sworn, testified as follows: -

Direct examination.

Mr. Smith:

Q. Where do you live?
A. Hartford, Connecticut.
Q. What is your business?
A. Chemical and bacteriological work. I have a private laboratory.
Q. Have you ever been to the plants of Palmer Bros. Company?
A. I have.
Q. Where?
A. At Fitchville, Connecticut.
Q. What did you go there for?
A. To make some tests of their sterilizers.
Q. Have you been there since they installed this steam sterilizer?
A. I have.
Q. When were you there?
A. On January 29th of this year.
Q. What did you do there?

Mr. Humes: If the Court please, just for the record at least, I would like to object to this line of inquiry or examination of this [fol. 124] witness, which has to do with showing how Palmer Bros. Company sterilize and what particular process they use, in their individual plants, as being incompetent, irrevelant and immaterial for the purposes of this case, and having no purpose under the issues.

The Court: The objection is overruled and an exception noted to the respondent.

(Question read.)

A. I watched the operation of the sterilizer, and took samples of the material after sterilization.
Q. What was the operation? Did you see them opening the bales?
A. I did.
Q. What did they do? Begin there and go through.
A. The bales are opened in the sterilizer room, and the material is wrapped loosely in burlap covering. About ten of the bundles are placed in a carrier and shoved into the sterilizer.

Q. That sterilizer is this machine shown on Exhibit No. 2?

A. Yes, that is it. The sterilizers are about five feet in diameter and eighteen feet long. They have a shell, and into that shell they pass steam at a pressure of about 70 to 80 pounds. After the material is placed in the sterilizer, they close the doors and produce a vacuum in the interior, equivalent to about ten inches of water. [fol. 125] That is allowed to remain for about ten minutes, and then live steam is passed into the interior, and maintained at a pressure of about 20 pounds for fifteen minutes. That pressure gives a temperature of approximately 258. The temperature of the interior of the shell, due to 70 pounds pressure, would be about 316. So that the shell is hotter than the center of the sterilizer.

Q. How did they know when they had reached the vacuum of ten inches?

A. There is a gauge on the outside.

Q. How do they know what the temperature is?

A. From the steam pressure. Of course, they have a gauge to indicate when they have passed 250 degrees.

Q. That is shown on some sort of a gauge, is it?

A. The steam pressure will show. You can calculate your temperature from your gauge pressure.

Q. And after the material is taken from the sterilizer, it then is passed on through the picker and the garnetting machine, is it?

A. Yes, sir; that has already been described.

Q. Now, did you make some tests of the material that came out of the sterilizer?

A. I did. After the material was removed from the sterilizer, we allowed it to cool for a short time, and then samples were taken from the surface of the load, and also from the interior of one of the [fol. 126] bundles near the center of the load. Those samples were taken in sterilized bottles to my laboratory, and bacteriological examinations were made.

Q. What did they disclose?

A. The interior samples showed no bacteria of any kind, and the exterior samples showed seventeen bacteria per gram of the material growing at 20 degrees, and eight bacteria growing at 37 degrees, the two temperatures which are ordinarily used in such tests.

Q. That is, those were the temperatures that you used?

A. Those are standard in bacteriological work.

Q. You used them, did you?

A. Yes, sir.

Q. That is Centigrade?

A. Yes.

Q. What is that in Fahrenheit?

A. About 70 and 98.

Q. The 37 is body temperature?

A. Yes, sir.

Q. What does that indicate to you, those tests, as to the efficiency of the sterilizer?

A. In my opinion, the sterilization was complete. I think the small number of bacteria found on the surface sample was due to

the harmless air which settled on the top of the load during the period while we were waiting for the material to cool?

Q. You had to let it cool?

[fol. 127] A. Yes.

Q. During the test, the outside of the bales would be really subjected to a greater temperature than the inside?

A. Yes. The temperature with steam at a pressure of 70 pounds is approximately 316, whereas the general interior temperature of the sterilizer at 20 pounds would be about 258.

Q. Would a test of seventeen to the gram be negligible anyway?

A. That is, compared with the numbers of bacteria that are ordinarily found.

Q. How many do you find ordinarily?

A. It depends entirely upon the conditions under which the textile material is kept, but they may run from several thousands per gram up to several millions.

Q. And many of those bacteria are not malevolent?

A. The majority of them I should say are absolutely harmless.

Q. How do you determine the malevolent bacteria?

A. Disease germs are ordinarily not looked for in any of the general tests of that sort, but we do look for fecal types, types of bacteria which would ordinarily be found in feci, such as —. We make special tests for those, and the presence of such an organism would be an indication that fecal material was present in the sample examined. We made such examinations and found no gas-producing types whatever.

Q. Are all these bacteria gas-producing germs?

A. No, sir.

[fol. 128] Q. In your opinion, does such a process of sterilization eliminate any chance of germs, living germs?

A. Yes, sir, absolutely.

Q. Are you familiar with this American Sterilizer Company machine?

A. I have seen that particular machine at Fitchville, and I am familiar with sterilizers of that general class. In fact, I have a sterilizer of that character in my laboratory, and they are used extensively in hospitals.

Q. They are recognized as efficient machines for sterilizing, are they?

A. That is the general method used for effective sterilization.

Cross-examination.

Mr. Humes:

Q. From your knowledge of the bedding industry and the materials that enter into the bedding industry, is it not your opinion that great care is thought necessary in the preparation of the material, in order to be helpful in general use among the public?

A. From the standpoint of health, that method of sterilization absolutely eliminates disease germs?

Q. What I am asking you is this: your knowledge of the material

that enters into the bedding materials convinces you, does it not that bedding materials generally require very careful sterilization and very careful safeguarding, in order to protect public health? [fol. 129] A. Yes, sir, that is true.

Q. The use of bedding material that contains any unhealthy or questionable material would be very dangerous to the public health, would it not?

A. If it were used without such treatment.

Q. Now, is it possible for you or anybody else to take this material out of this comforter, for instance (Exhibit "C"), and determine from any ordinary inspection whether or not it had ever been sterilized?

A. I don't know of any work of that sort that has ever been done, but I am inclined to think that following sterilization, the immediate manufacture of those comfortables, that there would be a marked difference in the numbers of bacteria in the sterilized material, as compared with shoddy made from unsterilized material.

Q. But the question I think you have misunderstood. Can you take that material from one of these comforters, after it goes into the retail market, and determine from an examination of it whether it has been sterilized or not?

A. That is what I say, from a bacteriological examination.

Q. In other words, the only way you could determine it would be by bacteriological examination?

A. Yes.

Q. Then it would be simply guesswork as to whether or not there [fol. 130] seemed to be sufficiently few bacteria in it to indicate sterilization?

A. No. That is done in milk now, in a practical way.

Q. But a bacteriological test is a test that cannot be made in the ordinary inspection of this article in the retail market, without tearing it apart,—can it?

A. Just as easily as a milk examination.

Q. Answer my question.

A. Yes, sir.

Q. How could you determine in this comforter in the retail markets whether or not it had ever been sterilized?

A. In the milk business——

Q. Never mind the milk business.

A. They could purchase a comforter and make the examination.

Q. And when you purchased a comforter and made an examination, how would you be able to pass upon some other comforters that were lying around on shelves?

A. You can't make a hundred per cent examination any more than you can in milk or anything else.

Q. You can't make an examination of that article in the retail markets in the ordinary course of inspection of a stock of goods and determine sterilization, can you?

A. Milk is done——

Q. Never mind milk.

A. You mean, make a hundred per cent inspection?

Q. It would require a scientific investigation of some one skilled [fol. 131] in that sort of work, to determine whether or not there had been sterilization, wouldn't it?

A. Yes, sir.

Q. Now, you are not familiar with the manufacturing of comforters generally throughout the United States, are you, or of mattresses, or of bedding material?

A. No, sir.

Q. You haven't any idea of how that material generally is handled in the trade, outside of Palmer Bros. establishment have you?

A. No, I haven't.

Q. You don't know whether they have any effective means of sterilization or not?

A. Palmer——

Q. No, the other people.

A. I don't know.

Q. As I understand it, under this sterilization process, the material is put in the sterilizer for about fifteen minutes under pressure?

A. That is done under steam pressure. It is under a vacuum for about ten minutes, prior to putting in the steam, so it is under temperature for considerably more than fifteen minutes.

Q. Doesn't the steam pressure leave it wet?

A. No. When the steam pressure is removed, the temperature is so high that the moisture volatilizes in a very short time.

Q. Dries itself?

[fol. 132] A. Yes.

Q. The day you saw them using these sterilizers, did you see them sort any of this material that went in?

A. I did.

Q. What did they take out of it?

A. I didn't notice that particularly. I saw the men at the bales taking the material out and throwing it into these burlap containers.

Q. What was it—solid material that they were throwing out—lead pipe?

A. Nothing of that sort that I saw. I don't recall definitely.

Q. What did they take out?

A. That I don't know. I simply saw them in a general way taking the material out of the bales. I was interested in the sterilization phase of it.

Q. But as an expert, you would say, would you not, that inspectors or authorities in going about retail stores inspecting and looking over bedding materials, would find it absolutely impossible to determine from such inspection as they could make in that retail store, whether or not the material had been sterilized?

A. No, sir, I wouldn't say that. I think that they could purchase a comfortable, and determine at random, just as they do in any other commercial way.

Q. They would have to take it to a laboratory some place, wouldn't they?

[fol. 133] A. I suppose the state departments are equipped.

Q. I am talking about an inspector that goes into an establishment.

A. The Health Department is equipped with a laboratory, and they do this same thing, go around the state and take samples.

Q. I wish you would get away from the New England industry and confine yourself to the bedding industry. You are testifying in a bedding case. I asked you whether or not it would be possible for an inspector going and visiting retail establishments having stocks of bedding materials such as these comforters, Exhibits "A", "B" and "C" on their shelves, to determine by any inspection in that store whether or not the material had ever been sterilized?

A. No, sir.

Mr. Smith:

Q. Of course, anybody looking at an article from the outside couldn't tell whether it had been subjected to a process of sterilization in such a way as you have described?

A. No, sir.

Q. That was for the purpose of killing the bacteria. In other words, you can't see the bacteria, can you, with the naked eye?

A. No, sir.

Q. That would apply just as strongly to the sterilization of any other second-hand material, wouldn't it?

[fol. 134] Q. If I read to you the statute of Pennsylvania which provides that the manufacturer shall not use any second-hand material, unless since last used such second-hand material has been thoroughly sterilized and disinfected by a reasonable process, approved by the Commissioner of Labor and Industry, would you say that an inspector could tell whether this second-hand material had been sterilized, by looking at it?

A. No, sir; absolutely not.

Mr. Humes:

Q. Did you make any investigation of the bacteria in this material before it was put in the sterilizer?

A. No, sir, I did not.

Q. You saw it before it went in?

A. Yes, sir.

Q. Is it not a fact that public health would be endangered if material such as you saw put in that sterilizer was ground up and not sterilized at all?

A. Yes, there is a possibility of infection.

Q. It wasn't an inviting appearing material, I presume, to sleep on and under?

A. I wouldn't say that it wasn't. It was old material.

Mr. Smith:

Q. On cross examination, you told Mr. Humes that from your [fol. 135] experience you considered it important, I believe—or

essential—that all this bedding material should be sterilized. Why did you say that? Did you ever have any knowledge of any bedding material carrying sickness—anything in mind, I mean?

A. I understood him to refer to this second-hand material.

Q. Suppose he did.

A. Simply to eliminate the possibility of infection. I don't know of any cases of infection that have ever occurred.

Q. From bedding?

A. From bedding.

Q. You just think it as essential that all our articles of clothing should be sterilized, wouldn't you?

A. Just as important.

Q. It is no more necessary to sterilize a mattress upon which you lie, or a comfort that covers you, than to have your own clothing or your overcoat sterilized, is there?

A. No, I don't believe there is.

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[fol. 136] DR. WILLIAM O'NEILL SHERMAN, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?

A. Bellefield Apartments, Pittsburgh.

Q. You are a physician, are you?

A. My actual work is surgery. I suppose surgery is included under the name of physician.

Q. How long have you been practicing?

A. Since July, 1901.

Q. You are a graduate of what college?

A. University of Pennsylvania.

Mr. Humes: We will waive qualifications.

Mr. Smith:

Q. How long have you been with the Carnegie Steel Company?

A. Since October, 1909.

Q. Are you acquainted with the sterilizers that are made by the American Sterilizer Company?

A. I am.

Q. Has the Carnegie Steel Company any of them, in any of the departments which you control?

[fol. 137] A. We have those sterilizers in every one of our Emergency Hospitals, in all of the plants, and all hospitals.

Q. What do you use them for?

A. To sterilize the materials that are used in surgical practice and to sterilize comforters and mattresses, or any other materials which

we might have occasion to sterilize, which have been used in the living quarters of some of our employees.

Q. Did you ever know of the use of this class of machines at other places?

A. Yes, sir.

Q. Where?

A. In the United States Army, the United States Navy, and some of the large industrial plants, such as at Hog Island, the Shipbuilding plant at Philadelphia. Many thousands of them have been used.

Q. To what extent were they used in the Army?

A. To delouse the clothing of the soldiers, sterilize them.

Q. Were there many of them?

A. Yes, a great many.

Q. What is the process?

A. The process of delousing——.

Mr. Humes: I object to this. I don't think it is competent.

[fol. 138] Mr. Smith:

Q. In your experience, you have found and you consider this process of sterilization effective?

A. Yes.

Q. Do you know what is commonly known as "shoddy," which is the torn-up rags, clippings, and so forth, sometimes used in bed comfortables, and consists of this sort of material that is lying here in front of you, which was taken from these Exhibits "A," "B" and "C," produced by Mr. Humes?

Yes, sir.

Q. Assuming that that material is used in bed comfortables, and during the process of making the comfortables the rags or the material from which this shoddy is manufactured is subjected to this sterilization by the American Sterilizer Company machine, would you think that that process would be effective to destroy any germs of disease, or other sorts, in the material?

A. It would.

Q. Did you say that in your use of these machines in the Carnegie Steel Company's plants, they were used to sterilize mattresses?

A. I did.

Q. And other articles of bedding like comforters?

A. Yes, sir, I did.

Q. What is saddler's felt?

A. It is felt made up of chopped up shoddy and pressed in such a way as to be used either by saddlers or by other individuals who [fol. 139] have use for such material, and surgeons?

Q. It is made out of shoddy, isn't it?

A. Yes, sir.

Q. Do you ever use it in your practice?

A. Daily, yes, sir.

Q. What for?

A. For the protection of bony prominences in the application of

plaster casts to the body, so as to take off the pressure of the plaster cast from those bony processes.

Q. Before you use it, is it sterilized, this shoddy, this saddler's felt?

A. We sterilize it before we use it, yes, sir.

Q. Did you ever know of any harm to come from its use?

A. No, sir.

Q. An infection of any sort?

A. No, sir.

(No cross-examination.)

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[fol. 140] RALPH HILL MELCER, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?

A. In Montville, Connecticut.

Q. What is your business?

A. I am treasurer of the Palmer Bros. Company, engaged in the manufacture and selling of bed comfortables.

Q. How long have you been with Palmer Bros. Company?

A. Since September 10, 1906.

Q. How long have you been at Montville?

A. Since the latter part of 1907.

Q. During all that time have you been employed at that place?

A. Yes; that is, in the concern.

Q. Do they make comfortables out of shoddy at Montville?

A. Only that very fine comfortable that you saw this morning. That is the only one that is made out of shoddy at the Montville plant.

Q. You mean the pink one?

A. Yes. My residence in Montville has nothing to do with the Montville plant.

Q. I know that, but——

[fol. 141] A. You asked what was made at Montville. Following my statement of residence you asked what was made at Montville.

Q. What do you make at the Montville plant?

A. We make cotton and wool and down filled comfortables.

Q. Do you use shoddy there at the plant?

A. Only in a small way, in the making of some of the higher priced wool filled comfortables.

Q. What does the company make at Fitchville?

A. Mostly shoddy filled comfortables.

Q. And you are familiar with the processes there, are you?

A. Yes.

Q. What do they make at New London?

A. They make mostly cotton-filled comfortables, using linters and such materials, chiefly.

Q. What is the extent of the trade of Palmer Bros. Company in shoddy-filled comfortables?

A. Over the whole country?

Q. Yes.

A. Why, it runs around 50,000 a year, at present. It used to run around a hundred thousand dozens.

Q. What does that mean in money?

A. About a million dollars.

Q. Are there any other manufacturers of shoddy-filled comforters?

A. There is only one other manufacturer who tears up material and puts it into comfortables, that I know of. That is a concern [fol. 142] which uses new material only.

Q. New material?

A. New material.

Q. What do you mean by new material?

A. I mean the new clips.

Q. What is the name of that company?

A. The Louisville Bedding Company.

Q. Is there any other company or manufacturer that you know of, that makes comfortables from secondhand material?

A. I never heard of a single one. We constitute the industry, as far as second-hand shoddy is concerned, in the manufacture of comfortables.

Q. You know the Fitchville plant, do you?

A. Yes.

Q. Approximately what investment has the company there?

A. Well, in buildings, machinery and tenement houses, just to put it roughly in round figures, I should say about a million dollars

Q. How many men do you employ there?

A. It varies from 200 to 250, up to double that number.

Q. How many of these comfortables filled with shoddy did you make, say, taking an example, in the year 1923?

A. I think about three quarters of a million were made in 1923.

Q. And they included comfortables that were filled with shoddy made from new material and from secondhand material?

[fol. 143] A. Yes.

Q. Do you use linters?

A. Oh, yes, in a very large way. Formerly, we were one of the largest users of linters in the world, for textile purposes.

Q. What are linters?

A. They are the waste product of the manufacture of cottonseed oil, one of the waste products derived in the manufacture of cottonseed oil. It is necessary, in order to make clean cottonseed oil, to get rid of this lint that is on the surface of the seed.

Q. When the gin tears the cotton away from the seed, the seed falls down and has a little bit of cotton on it, has it?

A. Yes.

Q. Then, before they use the seed to make cottonseed oil, they take off those little pieces of cotton?

A. So I have always been told.

Q. And are those linters any cleaner or more sanitary than new clippings, for instance?

A. I don't think I am competent to testify regarding the cotton linter industry. I have never been south and examined into it.

Mr. Smith: Then I withdraw the question.

Adjourned until Tuesday, February 17, 1925, at 10 o'clock, A. M.

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[fol. 144] Tuesday, February 17, 1925.

Morning Session

RALPH H. MELCER resumes the stand.

Direct examination (continued).

Mr. Smith:

Q. What proportionate relation has your shoddy business to the general business?

A. Do you mean in Pennsylvania?

Q. I mean, all over.

A. About one-fourth. I would like to correct that. By shoddy business, I mean the use of old shoddy rags.

Q. I don't mean that. I mean the shoddy business, new and old.

A. Of course, in the comfortable business, we don't know the new as shoddy business. You understand that.

Q. It comes within the definition of shoddy in the act, doesn't it, what you call the new?

A. It comes within the Pennsylvania Act definition of shoddy.

Q. And is prohibited?

A. Yes.

Q. It is that business, that total shoddy business, as defined by the Pennsylvania Act, that I am inquiring about.

A. Roughly speaking, I should say that it was thirty-five to forty per cent of our total business.

Q. All over the country?

[fol. 145] A. Yes.

Q. And how is that, as to Pennsylvania?

A. The figures hold fairly true for Pennsylvania.

Q. Now, tell me what you meant by saying that you didn't consider that this material made from new clippings and new material to be shoddy. What did you mean by that?

A. By "shoddy" in the comforter industry, we always understand old shoddy, old material. We always understand old material as shoddy in the comforter business.

Q. Mr. Howard Palmer was asked, in relation to this pink comforter that was offered as an exhibit, as to whether or not your com-

pany had commenced to manufacture those things, for the purpose of creating a high grade shoddy article. Is that true?

A. Why, no. We have used that material for years.

Q. That is, you have used the filling?

A. Certainly.

Q. Like that filling in Exhibit No. 1?

A. We have used that precise filling for several years. We have used a filling like it for a dozen years or more.

Q. Do you know what comforter cotton is?

A. Certainly.

Q. What is it?

A. Comforter cotton is soft cotton material that comes out of old mattresses or old comforters, or similar articles, and is baled up by itself under the heading of comforter cotton. It derived that name at [fol. 146] a time when comforters were the large source for that material. At that time, mattresses were not largely made with cotton filling. They contained curled hair for the better mattresses, and the cheaper mattresses would contain some cheap material, such as excelsior, or something of that sort, so that they had to get that mostly from comforters, and therefore called it "comforter cotton."

Q. Where does that material come from?

A. It comes from old mattresses and old comforters.

Q. How is it gathered? Who gathers it?

A. It is gathered by the junk men.

Q. And that material is permitted, under this statute, is it?

A. Yes.

Q. If sterilized?

A. Yes.

Cross-examinaton.

Mr. Humes:

Q. In other words, the so-called comforter cotton is secondhand material. It is simply used over, and it is practically the same form in the new comforters, and is a secondhand material, is it not? The form of it isn't changed.

A. Of course, it comes out in a solid pad out of a comforter or a mattress, and it is changed because it is torn up before it is made into a new article.

Q. It is softened up and fluffed up again and worked over?

[fol. 147] A. Not changed commercially, just changed mechanically.

Q. It is using the material again for the same purpose to which it was given its prior use?

A. It may be and it may not. That material is also derived from other sources than mattresses or comforters.

Q. From what other sources?

A. Well, it might be from pillows, it might be from a hammock, or it might be from clothing.

Q. It practically all comes from some sort of bedding material or articles that were used for covering purposes of some kind?

A. It might come from clothing.

Q. It would be a very small amount of it that came from clothing?

A. I should say the most of it would come from mattresses.

Q. In other words, practically all of it, when put into a new comforter, is being used for the same general purposes for which it was used originally?

A. Yes.

Q. Now, Mr. Melcer, you say that you have been using this high class filling that appeared in Exhibit No. 1 of the plaintiff for a number of years?

A. Yes.

Q. You heard Mr. Palmer's testimony that you had been making that for twelve or fourteen months, didn't you? Is he wrong about that?

A. If he said nearly twelve or fourteen months, he is wrong about it.

[fol. 148] Q. Have you any records to show how many comforters of that class have been made at your Montville factory? I think that is where you make those.

A. I don't know. We have discussed that a day or two ago, and that we used about $20,000 worth of that material this last year.

Q. In the period of a year?

A. Yes.

Q. $20,000 worth?

A. Yes.

Q. How many pounds would that be of that particular shoddy, approximately?

A. It would be approximately, taking the average price over the year, a dollar. It would be approximately 20,000 pounds.

Q. The average price over a year is a dollar a pound, you say?

A. It would range on that. It is pretty high now.

Q. Then the price that Mr. Palmer fixed as $1.38 a pound was simply at some specific time?

A. At the present time.

Q. The average price of it over a year has been about a dollar, you say?

A. Yes.

Q. Then the extent of your shoddy business in that sort of material compares as 23,000 pounds does to 4,000,000 pounds of the other material that appears in these other comforters, does it not?

[fol. 149] A. Yes. That is a poundage comparsion, but not a value comparison.

Q. We are speaking about a quantity value, a weight comparsion.

A. Even then the answer is not just to your question, because you have compared that material—we were talking about that material, and you compared it with a group of other materials. Now, we use, besides that material, other high-priced material that you call shoddy here in Pennsylvania, which does not go in comforters like that. We use beautiful snow-white cotton, that you would call shoddy.

Q. I am speaking about weights, not values. The testimony of Mr. Palmer was that you used 4,000,000 pounds of shoddy last year in the manufacture of this general class of comforters.

A. Yes, with those cheap things. Now, we use other material that you call shoddy in Pennsylvania, that is not included in that, of which that is one only.

Q. What is the price of new wool of a similar grade that would make a comforter of that kind?

A. Of a grade similar to that, the price would be $1.50 a pound today.

Q. Can't you buy absolutely new wool in the market today of that kind, garnetted or carded—whatever you call the process by which it is smoothed out—within $1.20?

A. If you could, the market price for that would not be $1.38.

Q. If I told you that purchases of that kind had been made in Pittsburgh by people in the bedding industry for $1.20, within a very [fol. 150] short time, would it suprise you?

A. I would simply say that somebody was selling below the market.

Q. Have you any records with you, shcwing the exact amount of business that your company has done in that particular exhibit No. 1?

A. No, I haven't.

Q. Your estimate, as you are making it now, is $20,000?

A. Yes.

Q. Is that at your selling price, you mean?

A. No, that is our cost price.

Q. That is your cost price?

A. Yes.

Q. What does that involve in your selling price?

A. It would involve in our net selling price about $22,000.

Q. What is the weight of one of those? How much wool is in one of those little comforters?

A. In that particular size, about three-fourths of a pound.

Q. About three-fourths of a pound in a comforter?

A. Yes, about that.

Q. I show you Respondent's Exhibit "D," and ask you what that is.

A. That is our comforter price list.

Q. Can you show me in that book the particular stock designation or particular items which represent this comforter, Exhibit 1?

A. That particular comforter I can't show you, but I can show you designations which cover comforters into which that stock goes. Will that be satisfactory?

[fol. 151] Q. In other words, this particular comforter that is Exhibit No. 1 does not appear in your price list at all?

A. No, because that is part of our retail line, and this is merely our jobbing line.

Q. You only manufacture this particular comforter for retail sales?

A. We have a whole group for retail sales, and that is one of our very fine comforters and is not in our jobbing line.

Q. Show us some of the particular items that represent the same grade of material in some other sized comforter.

A. Items on this page through here (indicating).

Q. In all of the material of grades of comforters appearing on page 11 of the price list, there is included the same grade of so-called wool shoddy as appears on Exhibit No. 1, is there?

A. Yes, in part.

Q. In what proportion does it appear?

A. It varies, depending upon the material that we have to mix with it.

Q. What other material do you mix with it?

A. We mix wool, various grades of wool noil. Wood *m*oil is ordinarily a woolen stock obtained from a mill that does combing in the manufacture of woolen cloth. One of the processes is to comb the wool, in order to get all the fibres of a certain designated size out, and those that fall below that size go into the noils.

Q. Is there any other kind of material than the noil that is mixed [fol. 152] with this grade of shoddy in the comforters appearing on page 11 of your price list?

A. Any suitable woolen stock, so long as it is wool, would go in.

Q. Is that other wool new wool or secondhand?

A. So long as it was suitable. All of it is new wool, including that, of course.

Q. Is that new wool?

A. Certainly.

Q. Then what proportion of this wool shoddy that appears in that comforter is mixed with the noil in these comforters?

A. It varies, depending upon the quality of the material.

Q. I am asking you to tell us the respective items and the proportion in which it is——

A. I say, it varies in any particular item, depending upon the run and the quality of the material we have to mix. We have certain standards of fillings that we established, and that is about the highest quality material that is practicable for fine comfortables that we can obtain, and we mix that in, in order to improve the quality of the filling.

Q. Now, the price, as appears in this list, I suppose, is a list price from which there is a discount?

A. Yes.

Q. What is the trade discount on that list to the trade?

A. Is it necessary for me to go into that?

The Court: I do not see that it is really material to the issue. [fol. 153] The Witness: Isn't that a personal part of our business?

The Court: We do not think the witness needs to disclose that, unless he desires to. It is somewhat in the nature of a trade secret, and he does not need to disclose it unless he wishes to.

Mr. Humes:

Q. You said that you handled some particular articles, including Exhibit 1, in your retail trade. Where do you conduct a retail business?

A. I didn't say that we conduct a retail business, or that it was in our retail business. I said it was in our retail line.

Q. What is your distinction between a retail line and a retail business?

A. I said one was a jobbing line and the other a retail line.

Q. What is the distinction?

A. Our principal line is the line we put out for the jobbing trade. Then there is a fine retail trade that buy direct from the manufacturers, and for whom a special line has to be gotten out. That line is called our retail line.

Q. In other words, you mean by your retail line, the line that you sell direct to the retailers, rather than through jobbers?

[fol. 154] A. That line is also open to the jobbers for purchase, but it is designed for the fine retail trade. The jobbers also buy that line.

Q. Your distinction is one without much difference.

A. Except that, that the line is not in that book that you showed me.

Q. Do you have a book, a list of your retail line?

A. No, we don't publish a book for that.

Q. Isn't it a fact that this so-called retail line that you talk about is really made up on special orders for special concerns, rather than carried in stock for general sale?

A. Oh, no. We have regular numbers.

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JAMES J. STEWART, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?

A. 757 Clarissa Street, City.

Q. What is your business?

[fol. 155] A. Stationary engineer.

Q. Where?

A. In the Municipal Hospital of the City of Pittsburgh.

Q. What kind of diseases do they treat at the Municipal Hospital?

A. All contagious and infectious diseases.

Q. What would that include?

A. Anything from whooping cough to small pox, that is whooping cough, measles, scarlet fever, erysipelas, smallpox, and so on.

Q. Do you have one of the American Sterilizing Company's sterilizers at that hospital?

A. Yes, sir, we have.
Q. What do you do with it?
A. Sterilize.
Q. Have you charge of that machine?

Mr. Humes: Obected to, as incompetent, irrelevant and immaterial.

The Court: The objection is overruled and an exception noted to respondent.

(Question read.)

A. When I am on duty, yes, sir.

Mr. Smith:

Q. What part of the day are you on duty?
[fol. 156] A. We change every eight days; we change from one turn to the other. This week I am on from 2:30 in the afternoon until eleven at night.
Q. What things do you sterilize?
A. We generally sterilize pillows and mattresses.
Q. Any other bedding?
A. No other bedding, no.
Q. Pillows and mattresses?
A. Yes.
Q. Are those the pillows and mattresses that have been used by the patients in the Municipal Hospital?
A. Absolutely.
Q. In a general way, do you sterilize these articles by the use of steam?
A. Yes, sir.
Q. Under pressure?
A. Yes, sir.

Cross-examination.

Mr. Humes:

Q. In this process of yours, how long do you keep those articles of bedding under steam pressure?
A. According to the nature of the goods, but when I am sterilizing, I generally give it the limit for everything I put through the sterilizer.
Q. How long do you leave them in there under pressure?
[fol. 157] A. Well, now, it is under pressure continually during the whole operation, because in the beginning I heat up my jacket—that is, the outside portion of the sterilizer—and it is under a 60 pound pressure. Then in the chamber, we turn the live steam into the goods, right direct to the goods, 45 pounds for a half hour, sometimes maybe a little longer.
Q. You never are satisfied to leave them under the pressure of the steam for fifteen minutes, are you?
A. I never leave it in that short a time.

M. J. McCarthy, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. 5331 Broad Street.
Q. What is your business?
A. Engineer.
Q. How long have you been there?
A. Eight years.
[fol. 158] Q. During that time, all of it, or a part of it, have you been using one of these sterilizers of the American Sterilizing Company?
A. Yes, sir.
Q. During the whole time?
A. Yes, sir.
Q. Do you sterilize articles of bedding with it?
A. Yes, sir.
Q. What.
A. Beds and mattresses, mattresses and pillows.
Q. By whom is that bedding used?
A. By the patients.
Q. The patients in the hospital?
A. Yes, sir.
Q. Patients that have contagious diseases?
A. Yes.

Cross-examination.

Mr. Humes:

Q. How long do you sterilize this material?
A. About an hour.

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[fol. 159] Edward A. Dohr, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. 4225 Calvin Street.
Q. What is your business?
A. Stationary engineer.
Q. Where?
A. At the Tuberculosis League Hospital.

Q. Where is that?
A. 2851 Bedford Avenue.
Q. Do you have one of these American Sterilizer Machines there?
A. Yes, sir.
Q. What do you do with it?
A. We use it to sterilize clothes, bedclothes, mattresses, pillows, and also clothing that the patients have been wearing, if they leave the hospital.
Q. That is the clothing and the bedding used by the patients?
A. Yes.
Q. Who have tuberculosis?
A. Yes.

[fol. 160] Cross-examination.

Mr. Humes:

Q. How long do you sterilize this material?
A. Usually from 30 to 50 minutes, depending on the size of the load we put in.

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THOMAS E. FRASHIER, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. On the North Side, Lake Street, 1217.
Q. Where do you work?
A. For M. Oppenheim & Company.
Q. How long have you worked there?
A. About thirty-seven years.
Q. What do they make?
A. They make hats, coats, vests.
Q. Men's clothing in general?
A. Yes.
[fol. 161] Q. What are your particular duties at that place? What is your job?
A. I go every morning and pick up the clippings and throw them in a box. Each man has two or three boxes.
Q. What do you mean by "clippings"?
A. That is where the men cut off the goods.
Q. That is the waste ends from the goods that are made into clothes?
A. Yes, sir.
Q. Describe exactly what happens to those clippings after a suit is cut out.

Mr. Humes: I object to this. We at least ask for an offer, as to what they propose to prove by this man, in connection with an operation in some Pittsburgh establishment.

Mr. McGuire: Yesterday Mr. Humes went into the question of the dangerous condition under which clippings were picked up, that is, that the floors were contaminated with spittle and with cigars. We mean to rebut this testimony by this witness.

Mr. Humes: If that is rebuttal, this is hardly the proper time for it, and in the second place, the activities or manner of conducting the business of some small clothing concern in the City of Pitts-
[fol. 162] burgh certainly is not competent to establish the general condition of the clothing industry.

The Court: At any rate, it is not in the case now.

Mr. Smith: It was brought out on cross examination.

Mr. McGuire: It is in this case as showing the safe condition under which our materials are produced.

Mr. Humes: In view of the offer, I object to the testimony.

The Court: Until the question gets into the case, we think we will sustain that objection. We do not see that it is in the case now at all.

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RALPH H. MELCER, recalled for further cross examination, testified as follows:

Mr. Humes:

Q. I believe you testified yesterday that in the comforter business, in so far as the use of shoddy was concerned, you considered the Palmer Bros. Company practically the whole industry.

[fol. 163] A. In so far as the use of shoddy was concerned, yes.

Q. In comforters?

A. Yes.

Q. You didn't mean by that, did you, that Palmer Bros. Company was the whole industry in the use of shoddy in the bedding industry?

A. In the comforter industry.

Q. Just in the comforter industry?

A. Yes.

Q. The mattress industry is a very much larger industry in this country than the comforter industry, is it not?

A. I assume that to be true, but I don't know anything about that.

Q. You know enough about the bedding industry to know whether or not that is a large industry, do you not?

A. Yes; but as to the relative size, I should be inclined to question it. I don't know.

Q. You know that the use of shoddy in various forms in the mattress industry is carried on very extensively, do you not?

A. I don't know that, no.

Q. When you associate together as one industry the comforter and the mattress and the general bedding industry, you don't mean to say that Palmer Bros. Company is practically that industry, do you?

A. Not if you combine us with the general bedding industry.

Q. And you confined that remark simply to the manufacture of [fol. 164] shoddy comforters themselves?
A. Yes.

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SAMUEL C. DEAN, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. McGuire:

Q. Where do you live?
A. In Norwich, Connecticut.
Q. What is your business?
A. In the woolen shoddy business.
Q. Are you employed by the American Woolen Company?
A. Yes, sir.
Q. In what capacity?
A. Superintendent of their Winchester plant.
Q. And the Winchester plant is located at Norwich?
A. Yes.
Q. Have they other woolen mills in connection with the Winchester plant at Norwich, where they manufacture cloth?
A. They have a total of some sixty-five mills.
[fol. 165] Q. What do you produce at your mill?
A. Nothing but woolen shoddy.
Q. Are you superintendent there?
A. Yes, sir.
Q. How long have you been superintendent?
A. Five years.
Q. How long have you been engaged in the woolen shoddy industry?
A. Around nine years.
Q. What is the total annual production of your mill?

Mr. Humes: We object to this as incompetent for any purpose in the case at this point.

Mr. McGuire: Among other things, if it is necessary to state, we are going to show what kinds of shoddy there are commercially known as shoddy, what things there are that are barred by the Pennsylvania legislature from use in our business, the comforter business.

The Court: Might this not go to the reasonableness of the Pennsylvania legislature? We think we ought to hear it.

Mr. Humes: If that is the purpose, we have no objection to it.

(Question read.)

[fol. 166] A. Around 6,000,000 pounds annually.

Mr. McGuire:

Q. Is your mill the largest producer of shoddy in the country or not?

A. No, it is not.
Q. Is there a larger producer than you?
A. One that I know of.
Q. What concern is that?
A. The John T. Slack Corporation.
Q. Where is the Slack Corporation located?
A. In Springfield, Vermont.
Q. Do you believe yourself to be the next largest producing shoddy mill?
A. Yes, sir.
Q. What kinds of shoddy do you make?
A. Nothing but woolen shoddies.
Q. Do you make them from both old and new material?
A. Yes, sir.
Q. What is the source of the old material from which you make your shoddy from old material?
A. I don't quite understand you.
Q. Where do you get the material that you make your old shoddy from?
A. We buy it from the regular handlers.
Q. Is it graded as it comes from the rag man?
[fol. 167] A. Yes, sir.
Q. Graded how?
A. Graded according to its own particular style.
Q. Style and color?
A. What I mean, there is a range of styles and everything is graded accordingly, color enters into it.
Q. Have you with you a sample of the material from which you make your old shoddy?
A. Yes, sir.
Q. Do you produce it?
A. Here it is.

(Envelope containing rags from which old shoddy is made marked Plaintiff's Exhibit No. 6.)

Q. Now, referring to Exhibit No. 6, I ask you if the pieces of old material are the pieces from which you make your old shoddy?
A. Yes, sir.
Q. And the fluffy material is the shoddy made from those old rags?
A. From that grade of rags.
Q. Now, will you describe some of the pieces of rags that are here, for purposes of the record?
A. They are all stocks known to the trade. That particular grade of stock is a skirted light wool.
Q. What do you mean by that?
[fol. 168] A. That is the classification for that style, grade of style.
Q. The classification that it has in the woolen shoddy trade?
A. In the rag trade.
Q. What are some of these pieces?
A. The piece you have in your hand is a piece of a sock.

Q. And this piece (indicating)?
A. That is another piece of a sock.
Q. And that (indicating)?
A. That is probably a sweater.
Q. And this knit piece?
A. That is a sweater.
Q. And that (indicating)?
A. A stocking.
Q. What does that raw material cost you at the present market?
A. The way it stands, about thirty-nine to forty-two cents a pound.
Q. Is it or not a superior grade of wool clips?
A. That is a medium grade.
Q. Was I mistaken when I used the term "wool clips"?
A. It is not known as wool clips. That is known a- skirted rags.
Q. Will you describe the shoddying process that this kind of material in Exhibit No. 6 goes through in your mill?
A. In the manufacture of that particular style of shoddy, those rags come in in bales, the bales are opened up, the stock is laid down in vary thin layers on the floor, and is sprayed with an [fol. 169] emulsion of wool oil.
Q. Why?
A. So as to preserve the fibre in going through the machines. After the stock has laid awhile and the oil has penetrated the fibres, it is run through the picking machine described.
Q. What sort of a picker is that? Is it the kind that has been described here in this court room as used by Palmer Bros.?
A. Something similar.
Q. Is it the same general picking process?
A. Yes.
Q. Go on with you process.
A. The stock is run through the picker and is then ready to go — the cards, similar to a garnet. The stock is carded and is then baled up and ready to ship to the trade.
Q. Does this kind of material in Exhibit No. 6 go through a carbonizing process?
A. It does, under some conditions. In this particular shoddy, it has not been carbonized.
Q. Is this shoddy some that you have taken from your stock?
A. Yes, sir.
Q. And you say this particular shoddy has not been carbonized?
A. No, sir, it has not.
Q. Then you don't always carbonize shoddy made from old rags?
A. Not always.
Q. When do you carbonize old rags?
A. It depends on how the trade want- them. If they want a [fol. 170] carbonized stock, we give them a carbonized stock.
Q. Now, have you another sample of old shoddy material?
A. I think I have one more.
Q. Will you produce it?
A. Yes, sir.

Q. Referring to Exhibit No. 7, will you tell us what the rags are that are there?

A. The rags there are known as skirted blue worsted.

Q. That is the rag with the dirt and soil on them?

A. Yes.

Q. Now, there is another lot of rags here apparently cleansed. What are those rags?

A. That is the same rag, the same grade, carbonized.

Q. And then there is the fluffy material which is the shoddy made from the carbonized rag?

A. Yes, sir.

Q. Does that go through the same process that you describe, with reference to Exhibit No. 6?

A. After it has been carbonized.

Q. From what source do you get these rags?

A. From the rag pickers.

Q. What do you pay at present market prices for this type of rag?

[fol. 171] Mr. Humes: Objected to as incompetent, irrelevant and immaterial.

The Court: We do not see that the price has any value.

Mr. McGuire: We want to show that the shoddy is a superior article to some of the permitted materials under the Act.

The Court: The objection is overruled and an exception noted.

(Question read.)

A. Between eleven and twelve cents today.

Mr. McGuire:

Q. Why do you carbonize that material?

A. To remove the cotton.

Q. Then there is in the rag wool and cotton?

A. A small percentage of cotton.

Q. Will you describe the carbonization? What is it?

A. The carbonizing, as I said before, is the process for eliminating the cotton from the woolen rags. The rags are first immersed in a bath of sulphuric acid. Of course, it is diluted to a certain degree, depending upon the quantity and the quality of the stock that enters into it. It is taken from the sulphuric acid and run through a dryer.

[fol. 172] Q. For what purpose?

A. It is then taken out of the dryer and run through a baker. By that time, the cotton or vegetable fibre in the rag is in a carbonized state. It is taken out of the baker and run through a dusting machine, which removes all the crystallized carbon, and it is then put in a neutralizing bath, such as water with a solution of ammonia or soda ash, or some other neutralizing agent, and the rags come out of the bath neutral. Then they are dried again and they are ready for whatever we want to do with them.

Q. You do sorting and grading after the rags get to you?

A. Sometimes.

Q. Further sorting and grading is then given by the rag dealer?
A. Yes.
Q. Do you make shoddy from new material, so-called?
A. Yes.
Q. What is the source of that new material that you make that shoddy from?
A. We buy them all from the regular dealers.
Q. As what is it known in the trade?
A. They are known as clips.
Q. Tailors' clips?
A. Yes; merchant tailor clips.
Q. Have you some of those here?
A. Yes, sir.
Q. And this is a blue?
[fol. 173] A. That is a new blue worsted.
Q. Referring to a package marked Exhibit No. 8, will you tell the Court what the contents of the package are?
A. The clip there is known to the woolen trade as a new blue worsted.
Q. It is a new clip?
A. Yes.
Q. Has it had any previous use?
A. No; that is just the way it comes from the delivering establishment.
Q. And the fluffy material is the shoddy that is made from it?
A. Yes.
Q. What process does that go through?
A. That stock there is simply run through the picker and the carding machine.
Q. Do you carbonize it?
A. Never.
Q. That is the only treatment you give it, just the picking treatment and the garnetting, to shoddy it up?
A. Yes.
Q. Then you bale it up and ship it to your trade?
A. Yes.
Q. Do you supply any other textile manufacturers than the American Woolen Company with your shoddy?
A. Yes, sir.
Q. To what extent?
[fol. 174] A. Very little; most of the output is taken care of by the American.
Q. But you do sell some?
A. Some.
Q. What is this material, this shoddy in Exhibit No. 8, used for chiefly?
A. It is blended generally with a percentage of wool and spun back into yarn for ladies' and men's garments.
Q. What is the shoddy that is made from Exhibit No. 6 used for?
A. That is used for the same purpose, and it is also used quite extensively in the knit trade, for making sweaters, socks, clothes.

Q. The shoddy in Exhibit No. 6 is not carbonized?

A. No, sir.

Q. Can you tell us some of the uses to which shoddy is put in the woolen industry?

A. The shoddy is used for all purposes in the woolen industry, very, very largely. It enters into practically every piece of clothing outside of the fine worsteds that are made. There are very few pieces of virgin wool in the market today.

Q. Does shoddy enter into the manufacture of blankets, to any extent?

A. Very largely.

Q. What is the composition of the blankets that shoddy enters into?

A. Some of them have a cotton warp. In some of them the [fol. 175] shoddy is blended with the wool, and worked up into woolen yarn and woven into blankets.

Q. Take the blanket that has a cotton warp. What would the fill be?

A. It would be liable to be 100 per cent shoddy, or liable to be a shoddy mixed with a certain percentage of wool.

Q. Is the shoddy that is used in the blanket manufacture ever made from shoddy material that is neither carbonized nor otherwise cleansed?

A. Blankets are often made from new shoddy, from the natural shoddy, in the natural state that they come in the rag.

Q. That is without carbonization?

A. Yes.

Q. Does the American Woolen Company make blankets of shoddy?

A. Yes, sir.

Q. Can you tell us some of the other articles of your manufacture that are made wholly or in part of shoddy, the shoddy of which is not either carbonized or otherwise cleansed?

A. They are used in practically all lines of goods. You will find a certain percentage of shoddy that has not been carbonized or otherwise cleansed, as you say. You are liable to find it in anything.

Q. How about mittens and underwear?

A. I am not familiar with the underwear trade. I know it is worked up into mittens. I do not know about underwear.

Q. Have you with you some samples of new or so-called virgin [fol. 176] wool?

A. Yes.

Q. Will you produce them?

A. Yes.

Q. What is this material that is in the envelope that I now show you?

A. That is a fine Australian wool in the grease.

Q. What do you mean by that?

A. I mean, in its natural state, as it is taken from the sheep's back.

(The package containing the Australian wool in the grease marked Exhibit No. 9.)

Q. How do you use this grease wool shown in Exhibit No. 9, in the woolen manufacture?
A. I don't know just how they do use that.
Q. Is it ever used in its natural state, without cleansing?
A. Sometimes. I have heard of its use.
Q. In what manufacture?

Mr. Humes: If it is only hearsay, he cannot testify to that.
The Court: The witness ought to testify only from his personal experience.

[fol. 177] Mr. McGuire:

Q. The price of that grease wool is what?
A. It is worth 80 cents in its natural form.

Mr. Humes:

Q. Do you know that?
A. Yes, sir, I know that.

Mr. McGuire:

Q. And this wool that is in this envelope that I now show you is what?
A. It is a scoured China wool.
Q. And the price of that?
A. Fifty cents.

(Package marked "Scoured China Wool" is marked Plaintiff's Exhibit No. 10.)

Q. The wool in the envelope that I now show you is what?
A. It is known as scoured Australian wool.
Q. And the price of that?
A. Around a dollar.

(The envelope marked "Scoured Australian Wool" is marked Plaintiff's Exhibit No. 11.)

[fol. 178] Q. I show you another envelope and ask you what the contents are.
A. That is a shoddy made out of white sweater clippings.
Q. Where do you get those clippings?
A. From the rag packers.
Q. What treatment do you accord this shoddy?
A. That shoddy has been simply picked and carded.
Q. That is, you pick it in your pickers and you card it in the device that is similar to the garnetting machine?
A. Yes.
Q. You don't carbonize it or otherwise wash it?
A. No, sir.

Q. What material does it go into?
A. It goes into yarns of a good grade used in the making of all kinds of garments.
Q. Now, there are two packages in the envelope, one dark and one light. What is the light?
A. One of them happens to be made from a bleached sweater clip, and the other one is made from an unbleached sweater clip, both white.
Q. Then are both samples of shoddy?
A. Yes.
Q. Both have the same treatment in your shoddy mill, and both are used for the same purposes?
A. Yes, sir.
[fol. 179] Q. What is the price of that?
A. I would say the darker sample is worth about 75 cents, while the lighter one is worth around 80.

(The envelope containing the shoddy above referred to is marked Plaintiff's Exhibit No. 12.)

Q. To what extent, if you know, does the supply of wool meet the demands of the woolen industry?
A. It is a known fact amongst most everybody that follows the textile industry at all, that the wool supply is not nearly adequate to the demand.
Q. And to supply the demand, is it necessary that shoddy be used in the wool manufacture?
A. I would say yes.
Q. Is there a common saying as to what sort of a garment could be made if we had to rely solely on the supply of new wool?

Mr. Humes: I object to this.
The Court: This is getting quite far away from the issue.

A. That grade of stock could not be used in the textile industry.

Mr. Humes: Then I add one more objection to this line of ex-
[fol. 180] amination.
The Court: We think the inquiry now is rather immaterial, and we sustain the objection.

Cross-examination.

Mr. Humes:

Q. As you just remarked, the shoddy that is used in the bedding industry is an entirely different grade of shoddy than the shoddy that is used in the textile industry?
A. Absolutely, yes.

Redirect examination.

Mr. McGuire:

Q. I show you some clips and ask you whether or not those clips could be used in the woolen industry?

A. Yes, they could.

Q. What are they—wool clips?

A. Well, they are a mixture; some are wool and some are cotton.

Q. When you say that this shoddy that is used in the comforter manufacture could not be used in the woolen manufacture, just what did you mean?

A. I meant clips of the grade that I had been led to believe were purchased by that industry, listening to the testimony here yesterday.

Q. Did your statement have any reference at all to the material [fol. 181] composing the clips?

A. No.

Q. You don't use cotton clips?

A. We use woolen clips.

(Package containing new clips above referred to marked Plaintiff's Exhibit No. 13.)

Q. Did you intend by your statement, in reply to Mr. Humes, that your answer should have any relation at all to the quality of the clips?

A. No. My answer was to the effect that the clip that is being used as a filler for this shoddy blanket is chiefly a cotton clip, and that is the only objectionable feature I have against it. We could not use that. We are in the woolen business and must have woolen clips.

Recross-examination.

Mr. Humes:

Q. And the size of the clip has something to do with its utility in the textile industry, hasn't it?

A. We would rather have a larger clip than a small one, but some of the highest grade clips today are coming in in what we call "chicken feed," and they are charging practically the same prices for them as for the larger size clip.

Q. After all of this material is spun up into material, it is dyed, [fol. 182] isn't it?

A. You mean, in the cloth?

Q. Yes.

A. Some of it is made into a natural blend. For instance, a heather blend cannot be dyed in the piece, it is dyed in the yarn; or else the natural color of the shoddy is used to advantage in making up the blend.

Q. In clothes?

A. Yes.

Q. This is first made up into yarn, is it?

A. Yes.

Q. For the spinning of the cloth?

A. Yes.

Q. I mean, it is spun into yarn and then woven into cloth?

A. Correct.

Q. What processes does that go through before it finally reaches the market?

A. After it is taken off the loom, it is inspected for specks, and imperfect places, and so forth. It is fulled—in other words, washed, scoured; that is, in our particular line of trade; it is not in all trades.

Q. I am speaking about the business that you are familiar with, and that you are handling?

A. Yes.

Q. It is scoured?

A. It is what we call "fulled." That brings it up and cleanses [fol. 183] it. It is then folded up and inspected and sent away to the trade.

Q. Do you sterilize these clips and the rags that come into your place before you use them?

A. No, sir.

Q. You don't even sterilize them?

A. No.

Q. After it in spun into cloth, what happens to it?

A. I don't just understand what you want. It is finished.

Q. This is spun into yarn?

A. Yes.

Q. And it is scoured?

A. Yes, after it is in the piece of goods.

Q. It is not scoured until after it is in the piece?

A. No.

Q. After it is spun into yarn, it is woven into cloth?

A. Yes.

Q. Isn't it usually dyed at some time during the process of manufacture?

A. Well, as I said before, the wool of course is mostly always dyed, and the shoddy in many instances is not dyed. That is why the grades are made and we get the value of the natural color of the shoddy rags, like those blue rags I showed you.

Q. You sort your rags out with such care as to get rags of the same color together and the same shoddy?

A. That's it.

[fol. 184] Q. And then you use that particular color in the weaving of textiles of particular colors?

A. Yes, sir.

Q. When material is dyed, at what stage of the operation does the dyeing occur?

A. Either in the natural state right from the bale, or after the rag has been carbonized. That wool, that is dyed right from the bale or in the yarn, or in the piece.

Q. You ought to know what is the ordinary practice.

A. The practice of all of them. In our Norwich plant, we do not do any yarn dying. We do stock dyeing.

Q. Do you sell any of the material, any of the rags that come into your place, that go into shoddy, to the bedding industry?

A. We have not recently. We have sold them to the Orr Felt & Blanket Company. I will say yes.

Q. What grade of shoddy have you sold to them?

A. They use all grades of shoddy. I will say a medium grade and a high grade.

Q. In the rags that you collect, from which you make this shoddy, do you find material that you can't use, and that you discard?

A. We find use for everything that comes in the bale.

Q. Even if there are cotton rags in there?

A. The cotton, of course, is automatically eliminated in the carbonizing or in the sorting.

[fol. 185] Q. In other words, you dispose of all cotton by the carbonizing process?

A. Yes.

Q. And when you have a material that has cotton in it, the carbonization eliminates it, takes the vegetable matter out?

A. Yes; sometimes we sort the cotton out.

Redirect examination.

Mr. McGuire:

Q. Is cotton always carbonized out of your shoddy?

A. Not always.

Q. Is cloth made from your shoddy in whole or in part always fulled?

A. No, it is not always fulled; that is, in general.

Q. Is cloth made in whole or in part from shoddy always washed?

A. No, sir.

Q. Is fabric in the woolen industry containing shoddy in whole or in part always dyed?

A. No, sir.

Recross-examination.

Mr. Humes:

Q. I believe you testified about some of the prices of some of these virgin wools. What is the price of the ordinary American virgin wool?

[fol 186] A. The medium grade is worth a dollar today, scoured.

Q. In its natural state?

A. No, scoured.

Q. What is it worth in its natural state?

A. Forty or fifty cents.

Q. Does the scouring increase the price of wool 100 per cent?

A. The wool generally shrinks anywhere from 40 to 50 per cent in the scouring.

Q. Eliminating the grease?

A. Yes.

Q. Do you buy this native wool direct from the producers in this country?

A. In the shoddy plant we don't use wool.
Q. You don't handle it?
A. No.
Q. You showed familiarity with these Australian and other wools that I supposed you were equally familiar with the American wool.
A. Of course, I am familiar with it.
Q. What was the market price of wool during this woolen season in this country, domestic wool?
A. There are as many grades of wool as there are of shoddies.
Q. Different grades of wool raised by the American farmer and sheared from the American sheep?
A. The medium grade wool I would say would be worth around 75 cents—65 to 75.
[fol. 187] Q. What were the cheaper grades?
A. Around 50 cents.

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CLAYVILLE A. MOORE, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. McGuire:

Q. Where do you live?
A. In Boston.
Q. What is your business?
A. Cotton waste and cotton linters.
Q. How long have you been engaged in that business?
A. About eighteen years.
Q. How many kinds of cotton waste are there?
A. That is a pretty broad statement. There are twenty of them.
Q. Does cotton waste include cotton shoddy?
A. Yes, we recognize it as such.
Q. Have you handled cotton shoddy?
A. At times.
Q. In buying and selling?
[fol. 188] A. I have.
Q. To whom do you sell cotton shoddy?
A. I don't specialize in cotton shoddy, but I have in the course of my experience handled some.
Q. Will you describe some of the kinds of cotton shoddy?
A. Well, the particular one that I have handled has been new clips out of underwear factories; not that we buy the clip, but we buy it after it has been shoddied up.
Q. Are you familiar with the way in which those clips are gathered and shoddied and made ready for market?
A. I am.
Q. Will you tell us just how that is done?
A. They are usually the result of cutting up new underwear, knitted underwear, the fashioning around the sleeves or in the body,

there is a certain amount of clips that result from fashioning the garments up, and they are preserved by whatever mill or factory is doing it.

Q. How? What care is taken of them?

A. They are usually placed in a basket or a canvas container, a canvas basket or a willow basket, I might say.

Q As those clips are produced, tell us just what the operation is for taking care of them.

A. Well, after they are accumulated on the table, they are usually dumped into a container of the nature I have described, and later accumulated in a bin, and later either packed up or baled up. In [fol. 189] some cases, in the larger mills, they have their own facilities for reducing that back into fibre and mixing it in again with cotton and producing a fabric again. In some of the small mills, they will sell them to dealers.

Q. When they are sold to dealers, what is done with them?

A. There are several industries that buy those clips and reduce them into fibre again.

Q. By fibre do you mean shoddy?

A. Yes, we call it shoddy. It is really a fluffy cotton as it would appear to you.

Q To what uses it that sort of clip put, do you know?

A. Well, it would depend on the market. It has various uses. It is used largely in what we term commercial batting. By that I mean the cotton batt that you would buy in a drygoods store.

Q. Is any of it used in the comfortable industry?

A. Well, I have heard of it being used there, yes.

Mr. Humes:

Q. Do you know?

A. I know from hearsay. I haven't sold any there.

Mr. McGuire:

Q. Where have you sold it?

A. As I said, I don't specialize in it very much, and the only [fol. 190] two sales that I can recall at this time is one that I made direct, and one in which I was indirectly concerned.

Q. And those were sales to whom?

A. Both of them were for absorbent cotton.

Q. To whom?

A. The one in which I was directly interested was a sale to Johnson & Johnson, of New Brunswick.

Q Are they manufacturers of surgical bandages?

A. They are manufacturers of surgical dressings.

Q. To whom was the other sold?

A. To Bauer & Black, of Chicago. I was indirectly concerned in that. I wasn't the jobber, but I furnished the material.

Q. How do you know it went to Baurer & Black?

A. Because the party I sold it to was another dealer, and he told me to ship it there.

Q. And you did ship it to Bauer & Black?
A. Yes.
Q. Who are Bauer & Black?
A. They are manufacturers of surgical dressings in Chicago.
Q. Do you recall what the price of that type of shoddy was?
A. Well, at the time I sold it it was pretty high; that is, higher than it would be today. This was a year or so ago.
Q. What is the price of that material today?

Mr. Humes: That is objected to as incompetent.
[fol. 191] Mr. McGuire: I am going to show that we have used that same kind of shoddy in our comfortables, and we are now prohibited from using it by reason of thic act.
The Court: We will overrule the objection and note an exception to respondent.

(Question read.)

A. Roughly, 16 or 17 cents.

Mr. McGuire:

Q. Are you familiar with the places where those clips are produced?
A. Well, I have been in some mills where they have been produced.
Q. Where are some of those mills?
A. Well, the bulk of the knitting industry is—Of course, it is all over the country, but one of the largest centers is Utica, and also Cohoes, along the Mohawk Valley.
Q. In New York state?
A. Yes.
Q. And by the knitting industry you mean the underwear industry, practically?
A. Practically, yes.
Q. Are you familiar with the way in which cotton linters are produced?
[fol. 192] A. Yes, I am.
Q. What experience have you had in the linter business?
A. Well, I have been buying and selling them since about 1907.
Q. Have you been through the country where linters are produced?
A. I have.
Q. And watched the way in which they are handled?
A. I have.
Q. Will you tell us just how linters are produced?

The Court: Is it necessary to have a re-recitation of that? We have already had that explained twice in the evidence.
Mr. McGuire: This is to be limited to a particular inquiry that I wanted to make of the witness.
The Court: Very well.

A. Do you want the whole story?

The Court: We have had that story.

Mr. McGuire:

Q. Let me limit it. Will you tell us how the cottonseed from which the linters are obtained are handled, the persons that are employed in them, and where the seed is stored, and how long they [fol. 193] remain in storage before they go to the oil mill for the linting operation?

Mr. Humes: We object to that as incompetent, irrelevant and immaterial, unless it is the purpose to show that new material is unsanitary, and that the health authorities ought to be even more drastic in their regulation of bedding material.

Mr. McGuire: It has to do with the reasonableness of the act.

The Court: We will hear the evidence.

Mr. McGuire:

Q. Limiting your answer to that phase of the linter industry, will you answer that?

A. Well, the seed, as a rule, are accumulated over a period. You will understand that really the cotton harvest extends over four or five months, that is, from the time they first start picking until they finish, dependent upon the various sections of the country, of course; and it is the practice of oil mills who buy these seed to accumulate them before starting a run. In other words, they might buy for a month, or accumulate the seed, before they actually started operations, and then they are gradually buying seed as the [fol. 194] seed are produced. As far as the handling is concerned, I don't know that there is any more care shown than with the average raw material. The labor in most of the South is negro labor, in Texas a large portion of Mexican labor. These seed usually come from the cotton gin, and eventually find their way, and usually directly, to the oil mill, who store them in sheds or big barns, you might call them. They call them seed houses. As I say, when they have gotten a sufficient quantity to keep their mill running, they start operations.

Q. Do the seeds ever sour?

A. Yes, that happens.

Q. What causes them to sour?

A. Fermentation, as a rule. Sometimes the seeds are accumulated, or they will have a damp spell, or the seed will become wet.

Q. Have you seen the negroes working about in the seed?

A. Yes.

Q. Before the linters are taken off?

A. Yes.

Q. Are they barefooted or shod?

A. It all depends on the weather. Sometimes they are barefooted and sometimes they are shod.

Q. Do they walk right through that seed before the linters are taken off?

A. They usually shovel it into a wagon and then shovel it into a seed house.

Q. How many grades of linters are there?

[fol. 195] A. I guess every person in the business will have a diffent opinion.

Q. What is the price range, the present prices?

A. The present prices will average from three cents at the mill to about eleven.

Q. What are the prices delivered? Does that depend upon the haul that has to be accomplished?

A. Yes.

Q. Take the lower grades of linters, are those selling at mill prices for three or four cents? Do you know what uses they are put to?

A. The very lowest, as a rule, are put to nitration purposes. That is something foreign to anything here. You might as well not go into it.

Q. Is there a low price linter that is used in the bedding industry?

A. Yes, there is.

Q. What is the price of that?

A. Three to four cents at the mill, at present.

Q. In what part of the bedding industry is it used?

A. It is generally used in what the trade term a blown mat-ress.

Q. What is a blown mattress?

A. It is merely a case of where they have opened up the linters by putting them through a picker, and loosened them up and blown into a tick.

[fol. 196] Q. Why do they blow them in? Why don't they lap them, or garnet them?

A. They are too short to practically be garnetted.

Q. So they blow them into the tick?

A. Yes.

Q. At present market prices, what is the price of the linters that are used in that way?

A. For a blown mattress?

Q. Yes.

A. Around three to four cents at the mill.

Cross-examination.

Mr. Humes:

Q. I ask you about the so-called shoddy cotton that you are selling to Johnson & Johnson and some other drug concern, for the purpose of making surgical dressings. Is that medicated in some way by them before it is used?

A. Yes, sir.

[fol. 197] Dr. CHARLES E. A. WINSLOW, a witness called on behalf of plaintiff, having been duly sworn, testified as follows:

Direct examination.

Mr. Smith:

Q. Where do you live?
A. In New Haven, Connecticut.
Q. How old are you?
A. Forty-eight.
Q. When did you graduate?
A. I graduated from the Institute of Technology of Boston in 1898.
Q. What have you been doing since you graduated?
A. I have been continuously teaching and studying public health, first at the Institute of Technology, in the department of Biology and Public Health; then at the University of Chicago, at the College of the City of New York, and in my present position, as professor of Public Health in the Yale Medical School; except for a period of two years between 1913 and 1915, when I was Director of Public Health Education, with the New York State Department of Health, and for one period of eight months, when I was on leave in 1921, to act as Director of the health work of the League of the Red Cross Society at Geneva.
[fol. 198] Q. What do you teach?
A. I am the head of the department, and I teach the principles of public health and industrial hygiene personally. Of course I am responsible for all of the teaching in the department.
Q. I meant the teaching of the whole department rather than you individually.
A. I am responsible for the subject of Public Health.
Q. What does that embrace?
A. That embraces the causation of preventable disease and the legislative control of the conditions which cause disease; the organization of health departments, and the education of the public in regard to problems of personal hygiene.
Q. I suppose in that connection you are constantly studying bacteriology?
A. Yes, sir. I am conducting investigations on bacteriology all the time. I give special attention to the behavior of bacteria, and particularly of the disease bacteria, in their general environment, that is, in water and earth, and their power of survival under different conditions.
Q. The inquiry in this case has been directed to the possibility, very largely, to the carrying of disease through what we call shoddy. Do you know what shoddy is?
A. In a general way; not technically.
Q. Do you know that shoddy is made from cotton and wool, usually by the picking of wool and cotton rags, and in the textile [fol. 199] departments spun into yarn and woven into cloth, and in the manufacture of comfortables is shredded and used in something

like pads. What is the likelihood, in your opinion, of shoddy holding or carrying communicable diseases?

A. I see no reason why shoddy should be any more liable to transmit communicable diseases than any other material. May I amplify that a litfle?

Q. Yes, I wish you would.

A. The bacteria which are the common type of disease-producing organisms, belong to a much larger group of bacteria in general, which is very widely distributed in water and in earth, and the surfaces of the human body. The great majority of bacteria in general are harmless, and many of them beneficial, but there are a few types which have acquired the power of living in the human body, on the membranes of the nose and throat. Those we call parasites. Those are the disease-producing forms. Now, like parasites in other groups of plants and animals, or like the parasites in the Greek term from which the use of the word is derived, these bacterial parasites have lost in a very large measure the ability to survive under any other conditions. They no longer live and multiply in earth or water. They have become adapted to the rich fluids of the human body, and they die out very rapidly when removed from that environment. Therefore, the only danger with which we are concerned in preventing communicable diseases is the danger of [fol. 200] rather direct and immediate transfer. It is fresh pollution which is dangerous. Of course, it is impossible to draw an absolute line and say that a thing is dangerous at 4:20 and safe at 4:21. If, for example, I am a typhoid carrier and I hand you an apple and you eat it, you will get those germs. If I put it down on a table and go out of the room, and you pick it up and eat it, the danger will be just as great. If it stays over night, the danger will be materially less. If it stays there a week or two and is still edible, the danger will be practically nil. In other words, the danger decreases with the passage of time. So that as I see it, any possible danger of the transmission of communicable disease from clothing or comforters or bedding, would come from the people who had recently used those things, or handled those things, within the past week or two, and not from anything that happened to them in the remote past, in the more remote past. There is one exception to that. There is only one of the germs that produce disease that has the power to form spores, the resistance stage, which does not die out as the ordinary stage does, but this disease, anthrax, comes practically from animals, cattle, hides and wool to men. So that as far as that disease is concerned, shoddy would be less dangerous than the fresh material, because the spores of anthrax would have had time to drop out. But I can see no reason whatever for assuming that there is [fol. 201] anything inherently dangerous about shoddy. If clothing or mattresses or comforters were dangerous, it would be, because of the exposure during the past few days to human contact.

Q. Would there be any greater danger, in your opinion, as to shoddy, than there would be as to other kinds of secondhand material?

A. Not the least.

Q. Assuming that shoddy was made from articles of clothing, or even bedding, parts of bedding material, its ability to carry communicable disease would largely depend upon the time that it had been used by a human being. Is that right?

A. It would depend on its exposure to an infected human being within a period of a few weeks.

Q. Would that be as true of other kinds of secondhand material that were used in the same way?

A. Secondhand or firsthand material, yes.

Q. Has there been some change recently in the idea of the value of fumigation and sterilization in connection with communicable diseases?

A. In the practical control of communicable diseases, twenty-five years ago almost the only thing that was done was to fumigate after the disease was over. At present, the more enlightened health departments do not use gaseous fumigation at all. They rely on daily and hourly disinfection of discharges during the course of the dis-
[fol. 202] ease. That change in practice has come from two things. In the first place, from the recognition of the fact that the early stages of disease are generally the most dangerous; and in the second place, from the recognition of the fact that the disease germs die out very rapidly outside the body. Therefore, if the discharges have been cared for during the course of the disease, it is not necessary to fumigate. If they haven't been cared for during the course of the disease, the danger will be increased and will be thrown on the other people in the household. In other words, with the advancing knowledge of bacteriology, our emphasis has come more and more to be laid on people and not on objects.

Q. I think it wasn't so very long ago that they had the idea that if a child played with a toy, if it had scarlet fever, that months afterwards somebody else might catch scarlet fever from the toy. Is that still believed?

A. That is not believed. Those cases that were supposed to occur in that way are now recognized to be due to recent contact with perhaps an unrecognized carrier of the germ in the street car or on the playground.

Q. You are familiar, I suppose, with the history of many of these typhoid fever epidemics, are you?

A. Yes, a good many.

Q. Is it possible, in your opinion, that the germs of typhoid fever, for instance, or any of these other diseases, should be kept alive under conditions of extreme cold, and for long periods, and then communicate a disease?

[fol. 203] A. As I explained, it is all a question of degree. If you had many millions of typhoid germs in a mass of feces, you would find but few of them surviving for a few weeks. For example, there would be perhaps one in a thousand after two weeks, but in five or six weeks they would all be gone, to a certainty.

Q. Have you made tests of the vitality of typhoid fever germs

A. Yes, I have been working on the vitality of germs off and on ever since I graduated.

Q. What do you find?

A. I find that there is this very rapid decrease in the first few hours and few days, and a very few surviving for several weeks, but very few out of enormous numbers.

Recess.

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Afternoon Session

Dr. CHARLES E. A. WINSLOW resumed the stand.

Direct examination (continued).

Mr. Smith:

Q. Have you made some tests in relation to the vitality of other bacteria besides typhoid?

A. Yes, various types.

Q. Tell us some of those tests that you have made.

[fol. 204] A. I have used most extensively the colon bacillus, which is a common intestinal organism. I have also conducted studies with various non-pathogenic types, one called streptococcus, which is asociated with various disease conditions.

Q. What have you learned as to the vitality of such germs?

A. All these experiments show that the germs whose habitat is the human body die out very rapidly outside that environment, in water, or when dried, or in any other than their normal medium, except, of course, in the artificial media that we prepare for them in the laboratory.

Q. Do you know what the process of sterilization is that is done through the American Sterilizing Company's machines?

A. I understand it to be ordinary steam-pressure sterilization.

Q. Is steam pressure sterilization effective to kill germs?

A. It is. That is the standard method we use in all bacteriological laboratories, every working day of the year. All our glass culture media and other materials are sterilized in that way, usually under fifteen pounds pressure, for fifteen or twenty minutes.

Q. Suppose there is a pressure and an exposure of the material to the steam for fifteen minutes, would that kill the germs?

A. That would destroy all life.

Q. You have spoken of anthrax. Would that be more likely to be found in virgin wool than in shoddy?

A. I think it would, yes. I don't think there would be any very great difference, but if there were any, it would come originally in [fol. 205] wool from the sheep, and the longer that material had been used, and the more it had been handled, the more likelihood there would be that the anthrax spores would have been detached.

Q. I wish you would state whether or not, in your opinion, there is any menace to health in the use of shoddy in comfortables, for instance?

A. I do not think there is any menace to health in the use of shoddy in comfortables.

Cross-examination.

Mr. Humes:

Q. Doctor, is there any menace to health from the use of unsanitary bedding generally, mattresses, comforters, and other bedding material?

A. It depends on what you mean by unsanitary. There is danger in the use of bedding materials that have been recently handled or soiled with human discharges.

Q. Is it not a fact that bedding material is a proper subject matter for health regulation and control with a view of protecting the public health?

A. It is.

Q. You would say, would you not, that from your experience in health matters, that bedding material, such as mattresses and comforters, were a proper class of material for the public health authorities to give their attention to and to regulate, to the end that [fol. 206] public health might be protected?

A. In so far as the use of those materials is concerned, yes. In regard to the material that goes into their manufacture, I should say no.

Q. That is a matter of opinion?

A. That is my professional opinion.

Q. There are others who have the right to have professional opinions that differ with your views, are there not?

A. I know of no authority on public health who would take any different view than that.

Q. Did you say that at one time you had been connected with the health authorities of the City of Chicago?

A. No, sir; New York state, Massachusetts, and at present I am a member of the Public Health Council of the State of Connecticut. I taught at the University of Chicago.

Q. During what period of time?

A. That was during the winter of 1910.

Q. I call your attention to Respondent's Exhibit "E", which is a bulletin of the Department of Health of the City of Chicago, on the menace of mattresses, and ask you if you have ever seen that.

A. I don't remember having seen it. I see this bulletin occasionally.

Q. You know that such a bulletin is issued by the Chicago Department of Public Health?

A. Yes. I am familiar with the bulletin generally.

[fol. 207] Q. What character of institution is the Chicago Department of Health? Is it a reputable institution?

A. Well, it is the Health Department of the city.

Q. Is it manned by competent officials, doctors, and others?

A. Some of them are very competent.

Q. Would you say that periodicals that are issued by them, or bulletins that are issued by them, are entitled to some credit, in so far as the public is concerned?

A. They certainly are. They go to the public in Chicago as the official utterance of their health authorities.

Q. Do you know anything about the Board of Health of the City of Spokane, Washington?

A. No, I don't.

Q. Have you any knowledge as to who the personnel of that board may be?

A. No, sir.

Q. Do you know that the board of health of the City of Spokane has legislated specifically upon this subject?

A. No, I do not.

Q. That they expressly prohibited the use of shoddy in the City of Spokane?

Mr. Smith: That is objected to.

The Court: We think you may examine the witness along this line. The objection is overruled and an exception noted to plain-
[fol. 208] tiff.

(Question read.)

A. I just answered that I knew nothing about the Health Department of the City of Spokane.

Mr. Humes:

Q. If the City of Spokane, Washington, through its Board of Health, has legislated upon that subject, that opinion would be entitled to some recognition and some standing, would it not?

A. I am quite familiar with the fact that a number of boards of health have regulations about the use of shoddy in mattresses, but there is absolutely no scientific basis for those rulings. It is only two months ago that as a member of the Public Health Council of the State of Connecticut, I was preparing a chapter of the State Sanitary Code, and one of my assistants brought me one of these ordinances as an example of a number that had ben drafted, and I dismissed that at once as being entirely out of accord with modern scientific procedure, as I understand it.

Q. But there are a good many other men with as much scientific training as you have, that entertain different views?

A. I have said already that I know of no one whose opinion would be accepted, I think in general, as an authority on public health, who could justify this legislation. It is, as far as I am aware, a sample [fol. 209] of the type of legislation that crops up occasionally in this country, without any adequate basis or foundation. It is based on the ideas of infection that we had twenty or twenty-five years ago.

Q. Well, with the ideas that were generally entertained some time ago, this legislation would have been in conformity with the best opinion as it then existed, would it not?

A. Twenty-five years ago, I suppose it would.

Q. Was that not true ten years ago?

A. No.

Q. How recently have the doctrines of twenty-five years ago been exploded?

A. One can't fix any exact date. It has been a gradual process. As the bacteria were discovered and their properties were studied, we got away from the idea that disease was caused in some mysterious manner, by some sort of miasma that came out of organic matter.

Q. Who was the leader in the explosion of those ideas?

A. The beginning of it dates back to the work of Pasteur, in the 60's and 70's of the last century, and gradually, step by step, our knowledge of bacteria has developed and increased.

Q. Twenty-five years ago you would say that the generally accepted opinion would approve of the reasoning which led to legislation of the kind in question. Who was the leader in the thought that ex-
[fol. 210] ploded that theory within the last twenty-five years?

A. I should have limited myself to the idea that twenty-five years ago this view of infection by objects was still current among the medical profession as a whole. Long before that the laboratory workers and specialists had found out more about it. The leader I think in the development of the modern ideas in this country has been Dr. Charles Chapin, of Providence, as much as anyone else.

Q. Have you been one of the leaders in advocating this thought the development of this thought?

A. I think I am hardly competent to answer that question.

Q. This has been a hobby of yours, has it not?

A. I think not.

Q. You have been very energetic in promulgating the doctrine, at least, have you not?

A. No more than any other doctrine that appeared to be indicated by scientific advance.

Q. Are we to understand that vermin is no longer a carrier of disease germs?

A. I have no idea of suggesting that.

Q. Don't you find vermin in the cast-off material that is used for the making of this shoddy?

A. I suppose that depends on what material is used. I am not familiar with the particular type of material that goes into the shoddy.

[fol. 211] Q. Then you have testified that shoddy furnished no menace to the public health, without knowing the kind of material that went in to make the shoddy. Is that true?

A. I testified, I believe, that shoddy, as such, was not a menace to the public health.

Q. What do you mean by "as such?"

A. I mean, there is no reason why shoddy should be regarded as dangerous, any more than any other material that hadn't been cut up and shredded.

Q. Are you familiar with the material from which shoddy is made?

A. No, I can't say that I am familiar with it as an expert.

Q. Suppose the material was gathered by the rag-pickers and junk dealers in slums, or in other portions of the big cities of this country, and stored in unsanitary places, and baled and shipped, and shred-

ded, would you say that the shoddy that was made from that material would be absolutely free from all danger of infection?

A. I should say that it would be very much more free from danger than the clothing that were on the people when they wore it, that went to make up the shoddy. That is, the whole process of converting people's clothing into shoddy would be a purifying process; the process of storage, the process involving the lapse of time, and during those weeks——

Q. Of course, it would be entirely immaterial as to whether or not it had been stored in sanitary places or unsanitary places, or whether it had been subjected to the habitation of vermin during [fol. 212] the process between its use and cutting up, would it?

A. I don't think that the sanitary nature of the places where it was stored could possibly affect it. Of course, if vermin, if fleas or lice, got into the material, and those fleas or lice happened to be infected, that would be objectionable; but I don't think that either fleas or lice are likely to enter a package of that kind. They seek human beings.

Q. On your theory, very large sums of money are being squandered by the health authorities of the various divisions of this country, then, in giving attention to the sanitary regulations that are in vogue?

A. If you mean the regulation embodied in these laws against mattresses and comfortables made of shoddy, I would say yes, most certainly.

Q. Don't the regulations of the health departments have to do very largely with the regulation of sanitary conditions, that would provide no more danger than your clothing would?

A. Some of them do and some of them don't. There are two main objectives in our sanitary legislation. You will find in all the laws about nuisances, the two ideas of danger to health and of offenses combined. Now, many of the things with which we deal in public health work do not have any bearing on health; they are conditions of nuisances. It is perfectly proper that the health department should control conditions that give rise to bad smells; but in doing that, they should and do generally, lay special [fol. 213] emphasis on particular kinds of nuisances which are detrimental to health, those which involve the fresh transfer of body discharges.

Q. Are you familiar with the fact that at least twenty-eight states in the United States have legislated upon the subject of bedding material.

A. I didn't know the number, but I knew a good many had.

Q. And you say that the thought which led to that is an entirely exploded theory?

A. Yes.

Q. And that all of that legislation is useless?

A. It is.

Q. Are you a reader of the Literary Digest?

A. Not regularly, but I see it occasionally.

Q. Did you see its article of December 22, 1923, on page 21, on

the subject of the unsanitary condition of mattresses and bedding material?

A. It seems to be an extract from these Chicago Health Department bulletins. No, I haven't seen that.

Q. I call your attention to Respondent's Exhibit "G," "H," "I" and "J," and ask you if you have ever seen any of the service bulletins of the National Vigilance Committee?

A. No, sir, I have never heard of them.

Q. Did you ever have your attention called, either through that service or in any other publication, to alleged frauds that were be-
[fol. 214] ing perpetrated in the bedding industry by deceptions practiced upon the public, in the nature of the materials which were being sold to them?

A. No.

Q. I call your attention to Respondent's Exhibit "K," being a copy of the State Gazette of Trenton, New Jersey, for February 19, 1924, and ask you if you have ever seen the article there exposing the frauds in the mattress and bedding industry?

A. This appears to be a reprint of one of these other bulletins.

Q. Partially. Printed at the instance of the Trenton Chamber of Commerce.

A. No, I am not familiar with it.

Q. You say you have never read this bulletin of the City of Chicago?

A. I don't remember this particular number. I am familiar with the bulletins as a general thing.

Q. Let us see how their theory conforms to yours. I call your attention to the last page of the bulletin, and in that bulletin they say: "The practice of manufacturing mattresses from unsterilized filling taken from filthy, contaminated and vermin-infested material, is to be condemned, primarily, because of the natural abhorrence which one has as to intimate contact with blood, sputum, excreta and vermin, which are commonly found upon it."

A. Where is this?

Q. On the last page.

[fol. 215] A. That page says "United States Public Health Service."

Q. That is the last paragraph.

A. The practice of disinfecting, did you say?

Q. Yes. "This natural repulsion alone would render the sale of renovated and secondhand mattresses unprofitable, if the facts of their origin were more generally known, and is sufficient to justify suppression of the traffic." Do you disagree with that declaration of the Chicago health authorities?

A. I should think it exceedingly unlikely that the filling of mattresses was generally made up of blood, sputum, excreta and vermin. It seems to me a very silly sort of statement.

Q. Do you know whether the investigations of the City of Chicago show where the material was coming from that was going into mattresses?

A. No, I don't.

Q. Will you turn to the report of the investigators on pages 245, 246 and 247——

Mr. Smith: We object to this. It is not cross examination, and then it seems to me it is an attempt by the learned counsel to get into the record something that is contained in the publication, as to which we have no knowledge, and which has not been proven.

The Court: He may use a publication of that sort, bearing upon [fol.216] this general subject, for the purpose of testing the knowledge of this witness, as forming some basis upon which we may know as to the weight to be given to his opinion.

A If these conditions as described existed, I should say that it was disgusting and unpleasant, and that mattresses of that kind should not be sold, as a matter of common decency.

Mr. Humes:

Q. The investigations made by the health authorities of Chicago, as indicated by this report, show that that condition did exist, do they not?

A Yes. In certain cases, yes.

Q. Now, let us go on them. We agree with the Board of Health on the first paragraph: "The offense to the esthetic sense, however, is of secondary importance, compared to the danger to health inherent in the use of material of this nature. The mattress which has been impregnated with the sputum of a consumptive serves as an excellent medium to preserve the life of the tubercle bacillus. When stored in the dark, damp basements of an insanitary establishment, away from the natural disinfecting agents of sunlight and drying, it retains the living tubercle bacilli over long periods of time, and thus may serve as a source of infection to the purchaser of the [fol. 217] 'new' mattress manufactured from the filling." Now, do we agree with that?

A. That is nonsense.

Q. Then it is fifty-fifty——

Mr. Smith: Do not make any comments.

Mr. Humes:

Q. In other words, we just half agree with the Chicago Board of Health. We agree on the first paragraph and disagree on the second. Let us go to the third: "The frequency of skin lesions of various types among the workers in these unhygienic establishments indicates the danger to which an individual is exposed by contact with this material. The danger of transmission of many of the specific parasitic skin diseases is considerable. Pus organisms have been found in the material repeatedly. These germs are not only the causative agent of abcesses, commonly recognized as boils and carbuncles, but are also found in more severe infections, such as osteomyelitis a necrotic bone disease, and pyemia, a blood disease,

characterices by multiple abcesses throughout the body. The bedridden invalid is particularly subject to such diseases, because of his lowered resistance." Do we agree with the Chicago Board of Health on that?

A. Let us see. There are a number of statements in that paragraph.

[fol. 218] Q. Analyze them and let us see how far we agree.

A. The first sentence, if it is true, "The frequency of skin lesions of various types among the workers in these unhygienic establishments indicates the danger to which an individual is exposed by contact with this material." Now, if those people were suffering from skin lesions and an individual who came into immediate contact with that material should rub that material into the skin, he might be exposed to danger; but a person who slept on a mattress in the inside of which that material was, some weeks afterwards, would not be exposed to danger. The germs have no way of getting out of the mattress. They don't have legs or wings, and they would die out in a few days or weeks, inside the mattress. It is a good example of a double statement which in itself is true, but which is calculated to mislead. It is true that people who handle infected material immediately afterward would be in danger, but it doesn't follow that mattresses made from this material would be dangerous.

Now, the rest, the next two or three sentences are, in general, correct; that is, the statements that there are germs that are the cause of these various diseases—"the bedridden invalid," and so forth. That is perfectly true. But the bedridden invalid gets these diseases from germs of the same kind that are in his own skin; that is, the pus organisms are present in the skin of all of us. They are what cause pimples, and when a patient is suffering from some [fol. 219] serious disease which lowers his vitality, the pus organisms that are in his own skin are apt to produce serious infection. There is more danger from the germs on the skin of any individual than there is in the material inside the mattress.

Q. Let us go on: "It is well known that vermin, such as bedbugs and fleas, act as 'intermediate hosts' or carriers of the diseases of man." Is that true?

A. That is true.

Q. If that is true, the question as to whether or not there was vermin in this material before it was cut up into shoddy would be a rather important element, wouldn't it?

A. If you could conceive that the vermin would stay in the material during the process of cutting up and making, I would. Bedbugs and fleas and lice feed on human blood. They don't live in baled shoddy.

Q. How about rats? Don't they carry all kinds of vermin?

A. They carry fleas.

Q. And they are liable to leave fleas any place they frequent?

A. Yes.

Q. And if they frequent a bunch of old rags that were to go into bedding material, they would leave the fleas behind them, wouldn't they, even though they jumped out before the machinery ground them up?

A. They might.

Q. Then there is a possibility from vermin, isn't there?

[fol. 220] A. What kind?

Q. The possibility of infection.

A. Of fleas and lice being carried through shoddy on the inside of comforters?

Q. Yes.

A. There isn't. Absolutely none. No flea or louse would stay in the inside of a comforter. It would come out very rapidly.

Q. If he comes out he is very likely to get on somebody, isn't he?

A. He would go out during the process of manufacture. He wouldn't remain hidden in the comforter while it was being manufactured.

Q. How long a process is the process of manufacture?

A. I am assuming that it takes some several days before the comforters are shipped out of the factory.

Q. When he comes out, where is he likely to go?

A. Jump onto the nearest person.

Q. Then your contention is this: that the use of this shoddy can only endanger the workmen or employees that may handle it from time to time, until it goes into the retail markets, and that there is a probability that it will lie on the shelves of the retail establishment long enough, so that the public health will not be affected?

A. I don't think there could be any danger except to the people who handled the shoddy originally as it comes to the factory, during the first few hours it is in the factory. These people might [fol. 221] contract disease, though such conditions are practically never reported.

Q. Are you familiar with the plant of the Palmer Bros. Company?

A. No, sir.

Q. You don't know any thing about it?

A. No.

Q. Are you acquainted with the officers of that company?

A. I never met any of them until a week ago, no.

Q. Now, let us go on. "Typhus fever, which is different from typhoid fever, is a septicemia or blood disease which has been smoldering in this country for a number of years. It was first described in 1896 by Brill, in New York City. The disease is now being reintroduced into the United States with the tide of immigration from the epidemic centers of the old world. The mortality from typhus in Europe, where it is very prevalent in certain areas, is usually high. It is transmitted through the agency of the body louse. The mattresses made from lice-infected bedding, taken from unhygienic homes are, therefore, possible sources of typhus fever. The control of this disease is a new and difficult problem confronting the health officer, for many cases of it are believed to be undiagnosed by the average practitioner of medicine." Do we agree with that?

A. That is quite true, in the main. The essence of that is certainly true.

[fol. 222] Q. "The United States Public Health service has prevented the spread of bubonic plague in this country up to the present time, by conducting a destructive campaign among rats in various seaports. The flea of the plague-diseased rat is the transmitter of the disease to man. The potential danger of bubonic plague always exists under conditions that permit rats to have access to such household furnishings as mattresses and similar material." Do we agree with that?

A. That is true.

Q. And that correctly recites the activity of the United States Public Health Service, does it?

A. Yes.

Q. Then the United States Public Health Service has seen that it was advisable to give some attention to the regulation of the bedding industry, to the end that public health might be protected?

A. Not in the least "by conducting a destructive campaign among rats." They clean up the places where the rats breed.

Q. In the activity, has not the Public Health Service concerned itself about old bedding material in these seaport places?

A. Of course, with the disinfection of the bedding that has been used by the sick. That is a most important matter, in typhus and in bubonic plague.

Q. And haven't they made very many regulations in the use of bedding?

A. Certainly as to the sterilization of bedding that has been used [fol. 223] by sick patients.

Q. In other words, bedding is conceded by those who entertain your views on the subject of the spread of communicable diseases, as well as by those who entertain the views that were generally in existence twenty-five years ago,—agree that bedding is a proper subject matter for a proper regulation by the public authorities, to the end that public health may be observed?

A. The use of bedding, yes,

Q. And the maintaining of a sanitary condition of bedding?

A. Yes.

Q. And the fact that some twelve states of the United States have by their laws prohibited the use of shoddy in bedding material, would indicate that there was some very general impression, or some considerable opinion existed among persons interested in the subject, that the use of shoddy was fraught with some danger?

A. I have been very much puzzled to know what it does indicate? It certainly has no basis whatever in the statement of any reputable scientific person.

Q. But it would indicate that there are many people that disagree with you in your scientific conclusions, wouldn't it?

A. I think that is a fair statement, yes.

Q. Have you ever seem the material that comes out of some of

these mattresses and comforts? Have you ever made any examination of them?

[fol. 224] A. No.

Q. What would be the effect upon health of a large amount of dust in comforters that would be bound to work through a lossely woven comforted?

A. Ordinary dust would have no effect.

Q. It is healthy, is it?

A. It is indifferent.

Q. It would be foolish for health authorities to concern themselves about the prevention of an accumulation of dust in beding material, I presume?

A. I should think it would, yes, sir. Certain kinds of dust, of course, are very dangerous, poisonous dust and quartz dust, but ordinary organic dust has no particular influence.

Q. By the way, doctor, how are these vermin propagated?

A. You mean, fleas and lice?

Q. Yes. By eggs?

A. Yes, by eggs.

Q. How long can those eggs exist and remain fertile, in material?

A. The eggs of fleas would not be likely to be found in material. The fleas breed on floors and under carpets, and so on. The eggs of lice are laid on the epidermis, and the length of their persistence would depend upon the temperature and various other factors, but they are not very long lived.

Q. What do you mean by that "depend upon temperature"? Explain what you mean as between cold and warm temperature.

A. Well, the range for the germination of the eggs of the louse [fol. 225] is very narrow. I don't remember the exact figures, but they are destroyed by even warm temperature conditions.

Q. By warm temperature conditions?

A. Yes. That is the reason why one of the things that led to the discovery of the part played by the louse was the fact that in Mexico they didn't have typhus fever in the warm parts of the country, but did in the cooler parts. The louse requires a moderate and rather restricted range of temperature, but in any case the eggs would have to hatch or die in the period of a few weeks. I don't remember the exact date.

Q. Can't the life of an egg, or the fertility of an egg, continue almost indefinitely?

A. Not under ordinary conditions. It might if it were kept at a very low temperature. As a rule, at very low temperature, you can prolong the survival of things of this kind.

Q. In cool damp cellars the life of the egg or the fertility of the egg would be very much greater than it would be if it was exposed to the light and open air some place, would it not?

A. Yes. In the first case, it would probably hatch; in the second case, it would probably die.

Q. If it would hatch, it would produce more eggs?

A. Not unless it had some human being at hand to feed on. The adult has to have human blood to feed on.

Q. It could feed on a rat, couldn't it?
A. Not the ordinary lice. The flea comes from the rat to man. But the two species of lice that occur on human beings do not, [fol. 226] I think, feet on the rat.

Mr. Smith: I believe the Census Reports of the United States, as it is said, are judicially noticed by any of our courts, and are admissible under the authorities, and we desire to offer the 14th Census, taken in the year 1920, as to the amount of business done in this country in rags, and particularly in shoddy. And we will ask the counsel on the other side to permit us to make a synopsis of that census, including just the few things that we want to show.

Mr. Humes. We object to the competency and materiality of this census matter for any purpose.

The Court: It is undoubtedly competent. The question might be as to the materiality of it. We think, however, we will admit it, and note an exception to respondent.

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[fol. 227] RALPH H. MELCER, recalled, testified as follows:

Direct examination.

Mr. McGuire:

Q. Have you with you some samples of the material used by Palmer Bros. Company in the manufacture of shoddy?
A. I have.
Q. Have you samples of the old material from which shoody is made, or both the old and the new?
A. These are both the old material.
Q. Are those the samples that are before you?
A. Yes.
Q. Taken from old stock?
A. Yes.

(The samples referred to are marked Exhibits Nos. 14 and 15.)

Q. I call your attention to Exhibit No. 14, and ask you to state the kind of cloth that is in that exhibit.
A. It is cloth that we know in the shoddy industry as satinettes.
Q. Of what material is it made—wool or cotton or both?
A. I will say rags in general; these secondhand rags are divided into two broad classes, the woolen rags which go to the woolen trade, and the cotton rags which go to other trades. We buy the rags known as the cotton rags. Those contain more or less wool in [fol 228] them, but we buy them as cotton rags.
Q. Now, the kind of rag in this particular exhibit that is open before you, what is the material of those rags?
A. It belongs to the group known as cotton rags.
Q. Is there wool in there and cotton?

A. Yes; mostly cotton, I should say.
Q. That exhibit, I think, is No. 14, is it not?
A. Yes.
Q. Have those rags been sterilized by your sterilizing process?
A. Yes, they have.
Q. Now, I call your attention to the rags in Exhibit 15, and ask you if this is a sample of the stock that you use in making old shoddy, that sample being unsterilized?
A. Yes, it is.
Q. I call your attention to Exhibit No. 13, marked "new clips," late this morning, while Mr. Dean was testifying, and I ask you if that is a sample taken from Palmer Bros. Company stock of new clips?
A. It is.
Q. And new clips that you use in the making of your new shoddy?
A. Yes.

Cross-examination.

Mr. Humes:

Q. You say that the woolen rags usually go to the woolen trade, and that the cotton rags come to you?
[fol. 229] A. I don't think I said that.
Q. I mean to other trades than the woolen trade. What other trade beside your trade is there, unless it is the paper trade?
A. That is the biggest trade.
Q. In other words, you and the paper manufacturers get the same kind of material?
A. No; we get a much superior quality in general.
Q. You get a much superior quality?
A. Yes; and pay a higher price.
Q. Isn't it a rather interesting coincidence that if I am any judge of material, that these are practically all woolen rags that you have produced here as an exhibit?
A. I don't think they are.
Q. Look them over. It looks to me as though most of that was wool.
A. I don't think so.
Q. At least half of it is wool, isn't it?
A. I can't say as to that; a test might determine that.
Q. That surely is wool, isn't it (indicating)?
A. No, I don't think so.
Q. This piece is?
A. That might be half cotton.
Q. Is that wool?
A. That might be half cotton and you wouldn't know, and this I think is almost all cotton, that piece (indicating).
[fol. 230] Q. It is some of the cotton that is sold in imitation of wool, is it? That is an unusually choice selection of rags, isn't it? It is a well selected sample, isn't it?

A. I think that is a high average sample. I don't think the other is. They will vary, of course. We get some much better than that.

Mr. Smith: We offer in evidence the different exhibits that we have identified during the progress of the trial, and rest.

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[fol. 231] OFFER IN EVIDENCE

Mr. Humes: On behalf of the respondent, I desire to offer in evidence the testimony of Mr. Edward B. Joachim, taken in this same proceeding at the preliminary hearing at the time application was made for a preliminary or interlocutory restraining order, Dr Joachim having died in the meantime; and I ask that counsel will not ask us to prove his death. With that admitted of record, we offer in evidence his testimony at the former trial.

Mr. Smith: I think without question that the desposition is competent, but there are certain parts of the deposition that we would like to object to as irrelevant as it goes along.

(The testimony of Dr. Edward B. Joachim, above referred to, was read in evidence as follows:

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[fol. 232] Dr. EDWARD B. JOACHIM, a witness called and duly sworn on behalf of defendant, testified as follows:

Direct examination.

Mr. Humes:

Q. Where do you reside?

A. My residence is Athens, Bradford County, Pennsylvania.

Q. What are you at present engaged in?

A. I am with the Department of Labor and Industry, in the capacity of chief of the bedding and upholstery division.

Q. How long have you been with the Department of Labor and Industry?

A. Eight years and seven months. A little more than that.

Q. Are you familiar with the fact that in 1913 the so-called Mattress Act was passed, in the State of Pennsylvania?

A. I know there was such an Act passed.

Q. Did you subsequently become connected with the enforcement of that Act?

A. Yes, sir, and the Amendment of 1915.

Q. Since that time, your business has had to do with the enforcement of the Act of 1913 as amended in 1915, and you now have [fol. 233] to do with the enforcement of the Act of 1913?

A. Yes, sir.

Q. State if during your connection in the enforcement of this Act, you have made an investigation and study of the use of shoddy in bedding materials?

A. I have.

Q. Just briefly, state to the Court in a general way, the extent of that study which you have made, and those investigations.

A. The manufacturing of mattresses under the Act of 1913, as amended by the Act of 1915, prohibited the use in the manufacture, of shoddy. It developed upon me to make a study of what shoddy was as used in the bedding industry. I found that a great many clippings, known as tailors' clippings, were pieces too small to be used for respinning and to go back into clothing. I also found a great deal of old clothing that had become worn out, that had been sold to ragmen, then to the general junk shops and then to the shoddy mills, and that was used in the manufacture of quilts, also in the manufacture of mattresses. It has disappeared almost entirely in late years, but in 1915 there were some pillows made from that stock, mixed with low-grade hair.

Q. You say it has almost disappeared, also in the use of pillows?

[fol. 234] A. Yes. The use of shoddy——

Q. Let us not consume too much time. Have you in your examination and investigation, investigated the actual condition of mattresses and bedding that was being sold and put on the market?

A. Yes, sir. That came under my duties.

Q. Have you immediately available the samples of the material that you have taken out of bedding material?

A. Yes.

Mr. Smith: I will ask Mr. Humes to make an offer as to what he proposes to prove.

The Court (Woolley): We would like to hear from this witness, if the witness can inform us, what the general condition of the shoddy industry was, the general operation of the shoddy industry, and generally, what the shoddy industry meant, when the Commonwealth of Pennsylvania commenced to enact laws regarding it.

The Court:

Q. If you will indicate to us in a general way, in your own way, what you know about this industry when the legislation began, and [fol. 235] what was wrong with it, or what was legal in it, and what mischief was present which these laws may have attempted to correct, we would like that information.

A. The principal objection that was advanced to the use of shoddy made from new clippings or new pieces of cloth, was the fact that after it was shredded it was an absolute impossibility for any person to designate whether it had prior use or not—whether it had been new before it was shredded, or whether it had been used.

Mr. Humes:

Q. When you say "used," you mean used by a person, in contact with the human body?

A. Yes, sir. In the examination of junk shops, I came across old mops that had gone to the shoddy mills, and that was also ground up. It had never been sterilized or disinfected. Owing to the impossibility, after a quantity of rags has been ground up, to determine whether they were new rags or old rags, it was deemed advisable, in order to have conditions safe for health and protect the human against the introduction of filth and disease, that shoddy should be prohibited. We had a great deal of difficulty in getting proper statements on articles of the character of filling material. There was a universal practice at that time, that this shoddy was marked all new cotton, and I was able to prosecute [fol. 236] quite a number of individuals in Philadelphia, because they had taken the gunnysacking which surrounds cotton bales in which the cotton is shipped, and in which all waste materials are shipped, and had ground that up and called that cotton, regardless of the fact that these coverings had been used in transportation, in dirty freight cars and in storage in damp cellars, and there was no sterilization and disinfection. In fact, the sterilization and disinfection of shoddy is prohibitive, on account of the cost. You can buy new material cheaper than you can sterilize shoddy.

The Legislature in 1915, proposed a form of tag, which was to be made of plain muslin or linen, on which statements were to be made, and almost invariable—I can testify that I never saw a truthful statement made on any article which was filled with shoddy. I have samples in my trunk of old stuff that has been ground up. I couldn't tell except by the word that was given me by the people who had the shoddy, whether it was new clippings or whether it was old rags from worn-out clothing, but the odor is vile. Sometimes it is possible, in very bad conditions, providing the inspector has a good nasal passage, to get the odor of the previous use by human beings. But the condition became so serious that it was determined by those interested in the State of Pennsylvania, in order to protect the health of the workers in the industry, workers [fol. 237] in the mattress factories—and we are also trying to protect the health of the workers in the industries which are regulated by this new Act of June 14, 1923, so that they would not be obliged to handle these filthy articles—I myself have been afraid sometimes to handle some of these filthy things; therefore I have put them in glass jars, and sealed some of them so as to make them safe to handle.

There are a great many comfortables filled with materials taken from old worn-out mattresses, which had been salvaged from the dump. Likewise, a great many comfortables have been salvaged—worn-out comfortables, and the stock re-used without any sterilization or disinfection, because the labor charge in handling it, and the installation of the machinery, would make it much cheaper to use new materials, although perhaps originally the shoddy, the

old material, was of a higher grade, but having had use, the best part of the article was worn out.

Q. Is it possible to determine on inspection, in the handling of shoddy, whether it has really been disinfected properly, or not?

A. It is almost an impossibility, for this reason: I might step out and do a lot of sterilizing myself, but if I immediately throw those materials on the dirty floor again, where they immediately [fol. 238] become contaminated with dust, it will do no good. The sterilizing of these materials—the so-called sterilizing of these materials, is not carried out very carefully. These are cheap articles. They are usually raked out, and they are then again put through the picker, and that stuff goes on the floor. If the material is to be carded—the difference between garnetting and carding is that the garnetting will use short stock, and in carding the long stock is used. You can't very well use long fibre in a garnetting machine, but the clippings, especially the shoddy that has been ground up from clippings, can be garnetted into bats, what they call cotton bats.

The Court: The garnetting machine is a machine which makes a cotton bat, or a wool bat, or you mix cotton and wool. Now, a bat is material that is put up in sheets, and usually comes out of the garnetting machine in rolls. It is fabricated. It is not exactly woven, but it is a fabrication?

Mr. Humes: When you buy cotton batting, it is in sort of sheets. That may perhaps be carded; the long fibre is used in that, and [fol. 239] the short fibre is used in the garnetting machine.

Recess.

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Afternoon Session

Dr. EDWARD B. JOACHIM resumed the stand.

The Witness: Health authorities are agreed that shoddy is a menace to the well-being of workers who are obliged to handle it, and also to the user if the shoddy should go into a mattress or comfortable or an article of furniture, a couch or anything like that. The shoddy which we get in the bedding industry, is usually the shoddy from the tailor shops. Now we will start with the cutting-table in a tailor shop or in a clothing factory. I presume you honorable gentlemen have been *in* tailor shops and have observed the clippings that drop off the cutting-table. They are walked upon by dirty boots; they are kicked around by dirty boots, and they come in contract with the spittle on the floor at the end of the day's work in a large factory. They are swept up, swept across the floor. Now, we have in those [fol. 240] clips not only the clippings from the cutting-table but the clippings from the finishing rooms, where the cotton comes in contact with the all-wool goods and the part-wool goods, and also worsteds. They are swept clear across these floors, and these clips come in contact with spittle—especially in the poorer shops, and

infrequently in some of the large shops. It has been my duty to call attention to certain workmen and workwomen around those places, about spitting on the floor. This is all swept up with the dust and the dirt, with the spittle, out into a room where it is assorted. It is assorted so that the larger pieces are put in a pile for wool rags, the small cotton pieces put in a pile for cotton rags; then they are reassorted again for use in a process perhaps, for reclaiming them for spinning purposes. But the small pieces all go to the shoddy mill, and in turn are sold to manufacturers of bedding, who have shoddy pickers, and as I stated this morning, they go through a garnetting process, because very few of the comfort and bedding factories today have anything but garnetting machines, because garnetting machines, as I said this morning, handle the small grades of stock. Now we can readily understand that after that is torn up, nobody can tell whether it has come in contact with spittle or not; nobody can tell except by the use of the microscope how much dust there is [fol. 241] in it. I will say that if you honorable gentlemen would like to have a demonstration of dust in some of these comfortables, I am prepared to make it right here. I have a microscope here which will magnify seventy-five diameters, and you can see for yourselves the dust in the fibre. Then we have the contention that it is all new shoddy. Nobody can tell after it is ground up, unless they have followed that piece of cloth through the different machines and followed it up into the mattress—he is the only one who can tell whether that was new or old, owing to the fact that this shoddy which comes into the bedding business is swept up over these floors. We do not consider that class of shoddy new shoddy at all, because of this filth; it has gone through this dirt. It absolutely cannot be considered new after it has been clipped and fallen on the floor. In these factories they are not going to take these pieces of cloth and lay them over as nicely as they would the cloth which they are going to cut into the garment. It is a waste. They say they have nothing to do with that,—"We will sell that to the clipping man", and he sells it to the junk dealer, and the junk dealer sells it to the shoddy man. I absolutely know that it is impossible for any man, unless he can follow that piece of cloth—if it is only that big [fol. 242] (indicating)—through the machine, to know that that is the piece of cloth, after it is ground up, and he cannot testify that it is new stuff, because it comes back in a spongy mass.

I have here a quilt, and I do not believe that Palmer Brothers Company will deny that this quilt is of their manufacture. I could not tell, and no other man could tell whether that filling material was originally new, in that mass. Now on this ticket it says, "Manufactured of new material; filling: 100 per cent new dark cotton carded".

(Witness refers to a comfortable, and cuts open the same, to show the filling.)

I had a test of that made yesterday afternoon here in Pittsburgh, at the Mellon Institute. The test disclosed that it contained 56 per cent shoddy wool and 44 per cent cotton.

Mr. Humes:

Q. What does the label show it to be?

A. It shows it to be 100% new dark cotton carded. That statement is absolutely beyond the truth. I have another quilt here, which has a yellow tag on it. Here is a quilt that they claim is manufactured of used material, 100% sterlized second-hand cotton shoddy material. You will notice the dust and dirt coming out of that.

[fol. 243] (Sample of filling taken out of the quilt referred to by the witness, shown to the Court.)

The Witness (continuing): Now, there is certainly dust there. If it was sterlized, there wouldn't be any dust in it. Dust is deleterious to health, and of course, there is a mixture of jute here, which is not cotton. The jute here is probably made from the covering which surrounds cotton in bales, and it is my thought that probably most of the dust comes from that material, because that is the material which collects a lot of dust in transportation. Now there is a mildew odor to that quilt. This quilt was purchased I believe day before yesterday, in Pittsburgh. The idea prevails, and it is largely commented upon in other states, that Pennsylvania is the forerunner of the states in getting legislation like this through. We cannot tell when a thing is in a spongy mass, whether that stuff was ever cotton in fabric, or new wool in fabric; and unless, as I said a moment ago, we could follow through the machines these pieces of cloth, that comes back to us in this spongy mass, filled, garnetted or carded,—I do not think they would call this material really carded, although sometimes they call garnets, cards; but the [fol. 244] stock is so small that the garnetting machine would have to be used. The material in this quilt here is also shoddy, and the dealer removed the tag before it was delivered. I presume he didn't want to get into trouble on account of the tag. Here is a piece of fabric (indicating sample), and I think you honorable gentlemen can see the dirt right in the fabric. This material is also quite dusty.

The matter of shoddy being used in comforts and mattresses, is quite a serious one. Most of these small clippings are not stored in decent places, healthful places, when they are collected by this clipping machine, especially from these small clothing factories. They wait until they can bale them. They are liable to be dumped into an old stable. I have in mind two places that were formerly used as stables in Philadelphia. The odor there is not very pleasant at times. They have stored them there until they got a large quantity to sell. Sometimes they are held for many months, to get a more favorable market price. Sometimes the larger bedding manufacturers from outside of this state—I know they did in the old days, and I have reason to think that they do it at the present time—tied these clips up and stored them. They are not very particular where they store them. They are looked upon as a waste produuct that does not require very much care in storing or in handling them.

fol. 245] Now, we must take into consideration also, in trying to eview this thing with some horse sense, that we have a great many weat-shops in lots of states. We don't have a real sweat-shop in Pennsylvania, owing to our workshop law; but we have places in the ity of Philadelphia, especially where they have an inspector who nspects workshops, where they employ people to come in by the lay, into their tenement houses; but in a place set off in that tene- nent house, is sort of a factory room. Usually these are the poorest, nost ignorant classes of people. They will spit on the floor, and in naking up these doormats in the factory or in the cutting establish- nents, and brough- to these workrooms to be finished, they must do ome drilling. They do not drill very large pieces off, but small ieces. Those small pieces are swept up the same way as in the arger factories—they probably haven't got as large a distance to be wept over, but they do spit on the floor, and it is to my mind one f the disagreeable duties of an inspector to have to see such things nd to handle. Down at Hog Island they had a big junk pile. They had some twelve thousand mattresses—small mattresses, single mattresses—that had been thrown out on that pile. They had all sorts of individuals working there, who couldn't get into the State [fol. 246] service, and some of these things got into a pretty bad, filthy condition. The junk men in Philadelphia got hold of it, and wanted to sell it back into the bedding business again, to trade it off, covers and all, and I finally got it in the month of December, 1918, and it was finally sold for roofing paper stock. It has been said that there is no market for shoddy, if it is prohibited in bedding. There is. You can use it for roofing paper stock, and it goes through a cyanide process that utterly destroys it as a material, but it comes out in the form of a finished product for construction pur- poses. But we can't have that cyanide process in the bedding busi- ness, because people couldn't inhale odor of sulphur, and therefore that process wouldn't be any good for us.

Q. In that connection, is the shoddy that is known as shoddy in the bedding industry, an entirely different article as to this treat- ment, from the shoddy that is used in the textile industry?

A. Absolutely. The shoddy that is used in the textile industry is shoddy that can be reclaimed, principally through being carbon- ized to get the wool out of it, and it is a long fibre, capable of being respun again; but this stock cannot be respun again; it is too short; it is a waste. You take a man in the textile business, and you tell [fol. 247] him that this is shoddy, and he will say "No, that is only sweepings." No, we don't consider that shoddy. The shoddy that is used in clothing, or, for instance, in the underwear spinning mills—they have to use a certain amount of new stock with the old shoddy, to respin it, in order to get strength to it again. Another thing: the long fibre that comes from the shoddy, from the larger pieces, they can take care of through carbonization, and even through some tearing down if it is a loosely woven cloth, and the dyeing that it undergoes changes its characteristics entirely. It changes the color, changes everything. Now if we examine a piece of new

cotton or wool—we will take cotton first—with the finest tendril under the microscope, we will find that the new tendril has on its sides numerous kinks. These kinks, uniting together with other fibres, gives the cotton that property which makes it capable of being spun into yarn. Now, what happens, if this goes through a picker, if it is woven into fabric? Those kinks or barbs and those fibres are entirely obliterated. They are elongated, pulled down. Therefore, you cannot take any tightly woven cloth with old shoddy or the shoddy out of the other material, and respin it, without the addition of the new stuff. Therefore, the character of the shoddy is entirely changed from cotton, if it is a cotton shop, and it hasn't those kinks on the sides any more. It cannot be known as cotton [fol. 248] any longer, although, if you add new material to it, I don't think anybody is going to question it, unless some individuals want to get down too close and have a tag put on, as some want to do.

Q. There has been some reference made to the furnishing of tags by the State. I will ask you if experience demonstrated the necessity of uniformity as to quilts, etc.

A. Yes, sir, it has.

Q. What was the experience?

A. Under the old Mattress Law of 1913, as amended by the law of 1915, the 1915 amendment to section 3, stated that the tag must be made of plain muslin or linen; and section 6 of that Act, stated the form must be stated on this plain muslin or linen tag in a certain way.

Now here is a tag that was originally put out by the Altoona Mattress Manufacturing Company, which is not a plain muslin or linen tag, under the 1915 Act. It says here, "Approved the first day of May, 1913, as amended." "As amended" meant the Act of June 14, 1915. Now there is a paper-face tag. It is absolutely impossible to keep a permanent record on a tag like that. That paper will get dry, curl up and fade away. Then it said in that Act, that the name of the manufacturer must be stated. Here we have a tag made of linen stock, in which the manufacturer simply says "Covered by the Hayes Manufacturing Company." On the top it says [fol. 249] "Official Statement." This tag did not say "Official Statement." The Act required that the statement on the tag must be headed "Official Statement. Materials used in Filling." Then they must say whether the materials were new or old or partly old or partly new, and then "Made by." This man said "Covered by," and then the name, and then the statement on the bottom, Made in compliance with the Act of Assembly," etc. "as amended."

Q. In other words, the difficulty in enforcing the old method, led to the adoption of the method by which the State published the tags?

A. We could not get standards.

Q. It was a necessary step in enforcement?

A. Absolutely. We have prosecuted men for not getting the proper tags, but then we had trouble; we had no money to properly cover the State at that time. Then we came to this form of tag.

Mr. Humes: Now, if the Court please, we would be very glad for the further enlightenment of the Court, to produce the material evidence of many of these investigations, to corroborate and establish some of the conditions which this witness has testified to, as he [fol. 250] has them here available for the Court, and if the Court would take the time and would indulge us, we would be very glad to let the Court see just what situation the State has been *in* up against in this shoddy business.

The Witness: There is one package that I do want this honorable Court to see, if they have the time.

Mr. Smith: Will counsel make an offer?

Mr. Humes: I am not making any new offer at all. There is one sample here that we want to show.

The Witness: I would like the Court to see some filling that has been taken out of a quilt, which is reground stuff from quilts and that has been put back into cotton batting again, as they term it, and it is old quilts, with part of the covers ground into them. Here is some of the shoddy that comes from cotton bales, the covering from cotton bales—the nasty, disagreeable odor to that.

[fol. 251] The Court: We doubt if this physical exhibition will assist us in any matter presently in hand.

Cross-examination.

Mr. Smith:

Q. How long have you been connected with the Department of Labor and Industry?

A. I was appointed on the 21st day of July, 1915.

Q. You then were not with the Department at the time of the first legislation?

A. No, sir.

Q. What was your business prior to your connection with the Department?

A. I was a dentist.

Q. Any knowledge that you have on this subject, is derived from your experience in the Department, not in any way as a manufacturer?

A. Not as a manufacturer, no, sir; as an inspector.

Q. I understood you to say that there was a distinction between shoddy as known in the textile trades and shoddy as known in the bedding manufactory?

A. Yes, sir.

Q. Were you consulted in the preparation of the Act?

A. No, sir.

[fol. 252] Q. Did you have anything to do with the preparation of this Act of 1923?

A. Yes, sir.

Q. Then, knowing this distinction between the different classes of

shoddy, why did you use such a comprehensive term as "shoddy, or any fabric or material from which shoddy is constructed?"

A. For the reason that it was not up to me to draw this Act, but I had something to do with it.

Q. The fact is that this word "Shoddy," which is used in the Act, would include a great deal of material to which your objections as enunciated upon the stand, do not go at all, would they not?

A. I stated here a moment ago, that it would be absolutely impossible for me to recognize a piece of cloth after it had been ground up, as being anything else but a waste material.

Q. Would that be true of the shoddy which is used in the textile mills?

A. Yes, sir.

Q. That is, if you found shoddy in the textile mills, you would be pretty sure from the fact that it was being used there, that it was not deleterious; still you couldn't tell anything about what it had been made from?

A. No, sir; and nobody else could.

Q. The word "shoddy" in this Act would prohibit the using of [fol. 253] that best quality of shoddy that you told us about?

A. Yes, sir. The great bulk of the shoddy which has been used in the bedding business—and when I say the "great bulk," I am willing to state that at least 75 per cent of it, possibly 85 per cent—is shoddy that is absolutely questionable in regard to cleanliness.

Q. The statute says "or any fabric or material from which shoddy is constructed."

A. Yes, sir.

Q. Out of what fabrics and materials may shoddy be constructed?

A. The off-falls of the cutting tables, for one. Nobody is going to take a new piece of cloth——

Q. The fabric or materials from which shoddy may be constructed—a great deal of that might be entirely harmless, might it not?

A. It might be, but I would seriously doubt it, for this reason——

Q. I am talking about all sorts of shoddy; for instance, shoddy in the textile mills.

A. I stated a moment ago that shoddy as it is produced in these mills and in the clothing factories, is deleterious to health by the way it is handled after it leaves the cutting tables.

Q. Are you talking about all classes of shoddy?

[fol. 254] A. Absolutely.

Q. Whether it is used in the textile mills or in bedding factory?

A. Whether it is a high-grade underwear clipping, or low grade; whether it is a high-grade cloth or low-grade cloth. They do not have any consideration for it in these factories.

Q. This morning you stated a certain woolen manufacturer had said that there wasn't a bit of cloth manufactured in this country today that didn't have some shoddy in it?

A. I understand there is certain cloth which had shoddy in it, yes, sir.

Q. Would you say that all the shoddy that goes into the manufacture of cloth, is injurious and harmful?

A. No, sir. I did not say that. I said here this afternoon, the material that goes into the cloth is really changed through the dyeing it receives.

Q. Now we come to the subject of second-hand material. This Act states "Any second-hand material, unless since last used such second-hand material has been thoroughly sterilized and disinfected by a reasonable process, approved by the Commisioner of Labor and Industry." That is, this second hand meterial which in this Act includes second-hand shoddy, is recognized as requiring sterilization and disinfection. Is that right?

A. We do not recognize secondhand shoddy.

[fol. 255] Q. Under the heading "b" of Section 2, the Act provides as one of the prohibited things, "Any second hand material, unless since last used such second hand material has been thoroughly sterilized and disinfected by a reasonable process, approved by the Commissioner of Labor and Industry." You understand, do you not, that there is certain secondhand material covered by "b" that I have read to you, that does not require sterilization and disinfection?

A. Certain materials, yes, sir.

Q. That goes to all second hand materials?

A. No, it does not go to all second hand materials; to second hand shoddy.

Q. All except second hand shoddy?

A. Yes, sir.

Q. Now, is there not in that classification of second hand material, certain things that would be just as likely to carry dirt and disease as second hand shoddy?

A. Perhaps.

Q. And yet you permit the disinfection and sterilization and the use of those. Now, what do you include in your answer, "Perhaps"—what materials?

A. Well, I would include second hand mattress stocks, second hand quilt stocks, stocks out of second hand pillows; material of which private use has been made, but the sterilization method [fol. 256] must be a reasonable one, and perhaps with the contamination that surrounds shoddy, the ordinary sterilization would not be. The ordinary manufacturer would not be able to put that into effect, and we would have violations of the Act by people trying to get out of it by furnishing affidavits that it is all new stock.

Q. I would like facts. Then these second hand mattresses and pillows and bedding that you have described, you admit that if sterilized and disinfected in a reasonable way, may very properly be used in the making of comfortables?

A. Yes, sir.

Q. And that when sterilized, so-called, they do not carry any menace or danger to the public health?

A. So far as we understand, if they are properly taken care of afterwards.

The Court:

Q. Material becomes shoddy when it is torn apart?
A. When it is torn apart; when it is ground up.
Q. When the shredding process is through, then it is termed "shoddy?"
A. Yes, sir. Before that it is something else.

Mr. Humes:

Q. By that you mean when it is identified as something else, and [fol 257] it is destroyed, it becomes shoddy?
A. When its identity is destroyed, it becomes something else.
Q. It becomes shoddy?
A. It becomes shoddy.

Mr. Smith:

Q. Am I right in suggesting that your objection to shoddy is that, because when it becomes shoddy, you can't tell whether it is old or new, whether it has been made from old or new fabric?
A. That is one of the objections.
Q. Is that your main objection?
A. No, sir. My main objection—not only my objection, but of all with whom I have discussed it, and also with my superiors, is that with the spittle with which most of it comes in contact, it is absolutely impossible to sterilize and disinfect it unless it goes through quite an intricate process, and the ordinary individual cannot equip his factory with such a system. Therefore we laid down no set rules for sterilizing and disinfecting.
Q. Do you know the method of sterilization of shoddy by steam?
A. I know there are steam methods, yes sir.
Q. Those methods are protective, are they not?
A. They are.
Q. They remove all danger from disease?
[fol. 258] A. Depending on the process or what the system is.
Q. There are methods of sterilization?
A. There are intricate methods, yes, sir, which the ordinary manufacturer could not install; the cost would be prohibitive to him.
Q. You spoke about the probability, or likelihood, rather, of all shoddy being contaminated by spittle and what not?
A. Yes, sir.
Q. Are you talking about all grades of shoddy?
A. Yes, sir.
Q. Would you prohibit the use of shoddy entirely in textile manufactories?
A. No, sir, I would not.
Q. Why do you make a distinction?
A. Because it is a different class of shoddy that they use there.

Q. And yet your Act doesn't make any difference?

A. No, for the reason that we wouldn't get that kind of shoddy in the industries.

Q. How do you know?

A Because I know that the price would be prohibitive.

Q. You heard the affidavit that was read here, that in some of their higher grades of comfortables they use a shoddy for which they pay 88 cents a pound?

A. Yes, sir, but that is a very small part of the business.

[fol. 259] Q. Was that true?

A. I didn't see the clips; I don't know.

Q. Do you know that a very high grade of shoddy is used in the manufacture of comfortables?

A. Yes, sir; shoddy wool comforts are manufactured, but those clips that they are made from dance onto the floor just the same as the cheaper ones.

Q. Where did you get these comfortables that you have here to-day?

A. Two of them are from Sears, Roebuck & Company, of Philadelphia. I have two here from Miller, Bain & Berry Company (?) of Philadelphia, and there is one of them here from the Pittsburgh Drygoods Company. There is one here from a concern out on Penn Avenue, by the name of H. A. Lewis, 2814 Penn Avenue. I do not interpret the law. The Attorney General of the State and the Courts interpret the law.

Q. When this statute uses the word "vendor," what does your Department understand that to mean? Who is the vendor?

A. The vendor of the article, as it was laid down in the law, from the Attorney General's office, is the person who sells the quilts in Pennsylvania, who is the storekeeper, who is the dealer. We do not ask the manufacturer to put his name down as the vendor.

Q. Of course, you know the meaning of the "vendor." It means the seller?

[fol. 260] A. Yes.

Q. Suppose that article would come from a manufacturer to a jobber: would that jobber be a vendor?

A. The jobber would be a jobber, yes, sir, if he is in this state.

Q. And he would sell to a retail dealer. Is the retail dealer a vendor?

A. Yes, sir.

Q. That might go on through two or three different hands?

A. Absolutely.

Q. One jobber at Philadelphia might sell to a jobber in Pittsburgh, and every one of those vendors is subject to the penalties in this state, unless their names are on that tag. Is that right?

A. I beg your pardon. I am not prepared to answer that question, because it is a subject of inquiry from the Attorney General's office, and the Act distinctly says, "Name and address of maker and vendor."

Q. When do you think we will hear from the Attorney General on that subject?

Mr. Humes: There is an opinion under the old Act, on the subject generally.

[fol. 261] Mr. Smith: I would like Mr. Humes to put into the record what that case decided.

Mr. Humes: It is an opinion of the Attorney General under the 1913 and 1915 statute.

Mr. Smith:

Q. Then the fact is, that the Commissioner of Labor and Industry has inquired as to what the meaning of the word is under this statute?

A. I wouldn't say definitely, but I have requested such opinion.

Mr. Humes:

Q. You have requested it from your chief?

A. Yes.

Q. You don't know whether he has made——

A. I don't know.

The Court (Thomson):

Q. As I understand, one of the chief objections is your difficulty in determining whether, when it is reduced to shoddy, it is old or whether it is new?

A. Yes, sir.

Q. Well, now, is there any practical difficulty as far as your experience goes, in the sterilization of what we know as shoddy, as an [fol. 262] effective means by which it can be properly sterilized so as not to become unhealthful?

A. It can be sterilized, but as I said a few moments ago, it would be an oppressive thing against a business man to compel a small man to put that machinery in to do it. It would drive him out of business.

Q. But if done, there would be no practical objection?

A. I don't see where there could be any objection, if it was possible to install that system.

Q. And there is nothing special in the composition of what we call shoddy, that makes it impracticable to sterilize it?

A. No, sir. You can sterilize anything, if you have the system.

Q. But there is difficulty in determining by examination, what is old and what is new?

A. Absolutely. You can't tell it after it is shredded.

Mr. Humes:

Q. Is it ever possible to tell by inspection, whether the material has been properly sterilized or not, after it goes into the retail markets of Pennsylvania?

A. No, sir; no man can do that. It is absolutely impossible, because the very next day it may have come in contact with some animal or something like that, and it is impossible to determine that thing. The claim is made that it is sterilized, and it isn't, half the time.

[fol. 263] Mr. Smith:

Q. Under "b" in the Act, section 2, could you tell whether any other second hand material had been sterilized?

A. No, sir.

Q. Then the provision as to sterilization which you permit here under "b" of Section 2, is practically the same in the respect as it would be in relation to second hand shoddy?

A. With this distinction, that there is a possibility of—I am not going to say possibly—that the second hand materials that are sterilized are not sterilized in the large quantities that shoddy possibly might be sterilized in, and it becomes a sterile product for immediate use, which with shoddy it does not.

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COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Humes: With a view of presenting to the Court's attention what I believe is the proper element of evidence in this case, with a view of showing the history and circumstances leading up to the [fol. 264] enactment of this legislation, I desire to offer in evidence Respondent's Exhibit "E", being a bulletin of the Department of Health of Chicago; also excerpts from the Literary Digest, marked Respondent's Exhibit "F", and certain exhibits designated as Respondent's Exhibits "G," "H," "I" and "J," being bulletins of the National Vigilance Committee of the Associated Advertising Clubs of the World. I also desire to call to the Court's attention, in order that they may appear in the record as having been specifically called to the attention of the Court, the acts of some twenty-six or twenty-seven states on the subject of the regulation of the bedding industry. While the Court will ordinarily take judicial notice of it, I feel it is in connection with the history of this legislation and the circumstances leading up to it, and that the acts themselves are a proper subject for introduction, so they may be of record in the case. And we will therefore submit that. I do not care at this time to read them at all, but I would like to make those offers, in order that they may be a part of the record.

Mr. Smith: We object to the offer of these exhibits here, but do [fol. 265] not object to the offer of the different statutes. These bulletins, or at least a bulletin, of the Department of Health of the City of Chicago, entitled "The menace of mattresses," were offered upon the hearing before, and were rejected. It seems to me these different publications here, without any identification, or even with identification, are not competent in this case.

The Court: As we understand counsel for the complainant in this case, they are not objecting to the offer of the statutory references of the different states?

Mr. Smith: No, Your Honor. We object to these offers, except the statutes of the states, as incompetent and immaterial.

The Court: We have endeavored in this case, so far as possible, to let in every bit of testimony that might by any possibility throw any possible light on the subject matter of this inquiry. We do not see any real evidential value to these pamphlets and publications of the Health Service and Advertising Service and Literary Digest, other than the fact that they were published and circulated. The correctness of the statements therein contained certainly has no [fol. 266] evidential value, and that is not the way to prove such facts as might appear in those papers. We are going to admit these pamphlets and publications in evidence, merely and solely as evidence of the fact that such articles were published in such papers, but not as proof of any of the statements therein contained. The statutes, as we understand it, offered by counsel, are not objected to by counsel on the other side, and they are admitted without objection. To this ruling, counsel for complainant excepts, and at his request a bill of exception is sealed.

Adjourned until Wednesday, February 18, 1925, at 10 o'clock, A. M.

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[fol. 267] Wednesday, February 18, 1925.

Morning Session

Mr. Humes: I wish to offer in evidence Respondent's Exhibits "A", "B" and "C", being the three comforters that have been identified.

CHARLES C. BRIGHT, a witness called on behalf of Respondent, having been duly sworn, testified as follows:

Direct examination.

Mr. Humes:

Q. Where do you live?
A. Pittsburgh.
Q. What is your business?
A. The manufacture of bedding.
Q. How long have you been engaged in the manufacture of bedding?
A. About thirty-eight years.
Q. During that time, have you had experience with the various materials that have been used in bedding?
A. I certainly have.

Q. Have you had occasion to come in contact with shoddy as a material used in bedding?

A. I have, at numerous times, particularly previous to the Act [fol. 268] of 1913 prohibiting it in Pennsylvania.

Q. Tell us in your own way what shoddy, as it is used and known in the bedding industry, is composed of, and how it is manufactured?

A. Of course, shoddy is manufactured from rags, clippings and other materials broken up by what they call shredding machines, shoddying machines. I have seen the process of shoddy, and saw men stand there with great forks, and fork all kind of dirty, filthy materials into these machines. It was taken away from the machines with suction fans and distributed in different parts of the factory it was made in. When we use shoddy, we endeavor to use what is known as tailors' clippings, so-called new shoddy. We finally discovered that we were being cheated as the manufacturers of this so-called shoddy were mixing percentages of old materials with the so-called new materials. That was our first object in trying to do away with the shoddy altogether.

Q. After the rags are ground up into the form of shoddy, is it possible to tell whether they are made from what you term as new clips, or whether they are made from old rags of the filthiest sort?

A. To a certain extent it is.

Q. To what extent?

A. Possibly 75 per cent. They could probably mix 25 per cent of old material with the new and get away with it, without being discovered.

[fol. 269] Q. Without your knowing it. Then when that 25 per cent of old fluffy material was put in that so-called new clippings, you can't determine?

A. Not unless you would discover pieces of old material that hadn't been thoroughly shredded. That is how we got next to the fact that we were being cheated in the so-called new shoddy.

Q. Have you recently had occasion to go through any shoddy plant where shoddy was being manufactured?

A. About the middle of December, 1923, was the last time I was in a shoddy plant.

Q. Tell us how shoddy was being manufactured in that plant?

A. These old materials, these old socks and underwear, and felt hats and everything imaginable in the pile, and these men were forking this material into the machine. They were not handling it with their hands. They were putting it in with forks, and it didn't make any difference what was there, it all went through.

Q. Was that shoddy that was being manufactured for use in the bedding industry?

A. Yes, sir; both mattresses and comfortables.

Cross-examination.

Mr. Smith:

Q. How long have you been in the bedding business?

[fol. 270] A. Approximately thirty-eight years.

Q. What did you make?

A. Bedding generally, pillows, mattresses, batts, spring beds, iron beds, hospital furniture.

Q. You don't make comforters, do you?

A. No, sir, never did.

Q. What do you stuff your mattresses with?

A. Cotton, hair, excelsior, kapok, materials other than shoddy generally used in the manufacture of bedding.

Q. What kind of cotton do you use?

A. All grades, from the low grade to the high grade linters, pure cotton.

Q. What are linters?

A. Linters are a product of the cotton seed, the last cutting of the seed before it is prepared for the oil mill.

Q. Did you ever see linters handled by those who were preparing the seed to make oil out of it?

A. I did, very often.

Q. Where?

A. In the south.

Q. How do you put these linters into mattresses? Do you just stuff them in?

A. Well, they are put in the machine and run out into the tick like you would stuff a sausage. In some cases they are blown in; in other cases, the linters are felted and put in in sheets or batts.

[fol. 271] Q. Some linters are very dirty and dusty, are they not?

A. Yes, sir; but they are cleaned before that.

Q. How do you clean them?

A. With pickers, willows, fans, cyclones, condensors.

Q. You don't sterilize them, do you?

A. No, sir; there is no occasion to sterilize them.

Q. Why not?

A. Because they are absolutely clean.

Q. If they are absolutely clean, what do you clean them for?

A. To take the dust and any dirt or foreign matter that might be in them out of them.

Q. You don't know that a cargo or load of linters is any better from a sanitary standpoint than a cargo of rags, do you?

A. Yes, I do.

Q. How do you know that?

A. Because I have seen them on all occasions, both ways, both rags and linters.

Q. By looking at a lot of linters, you can't tell whether there are germs in them or not, can you?

A. No, I certainly could not, but I should pretty near guess that there were, in the rags I have seen.

Q. Did you ever see any germs in any rags?

A. No, I don't think I ever saw a germ.

Q. It is just a guess, isn't it?

A. No; it is what I have from the authorities to——

Q. Did you ever use shoddy in mattresses?

[fol. 272] A. Yes, sir.
Q. Where was this shoddy plant that you visited?
A. In Kentucky.
Q. What was the name of it?
A. I don't care to state that.
Q. You don't care to state that?
A. No.
Q. Why not?
A. Well, I was taken through this plant as a courtesy.
Q. But I want to know.
A. Do I have to answer that question?

Mr. Humes: Go ahead and answer it.

A. The Louisville Bedding Company.

Mr. Smith:

Q. The Louisville Bedding Company?
A. The Louisville Bedding Company, of Louisville, Kentucky.
Q. Do they use any old shoddies in comforters?
A. Certainly they do.
Q. Do they make mattresses?
A. Yes, sir.
Q. Do they use any old shoddy in mattresses?
A. I don't know.
[fol. 273] Q. How does it come you don't know?
A. I didn't try to find out.
Q. But don't you know their trade?
A. Pretty much so.
Q. And you don't know whether they sell a shoddy mattress?
A. No, I don't.
Q. Now, you say the men forked this shoddy into a machine?
A. Yes, sir.
Q. What kind of a machine?
A. A grinding machine, shredding machine.
Q. What objection did you have to their forking it?
A. I haven't any objection to it.
Q. You didn't mean to indicate that that was not a proper thing to do, did you?
A. I did not.
Q. In other words, that would be cleaner than to handle it with their hands?
A. It was simply to facilitate the operation.
Q. I know; but I ask you if that wouldn't be cleaner than for them to handle it with their hands?
A. I think it would.
Q. Why did you emphasize the handling it with a fork?
A. Because that is the way I saw the operation.
Q. Felt hats,—what did they have to do with it?
A. They went through the machine the same as the rest of the [fol. 274] stuff that went through.

Q. Can you make shoddy out of felt hats?
A. Certainly.
Q. What is the objection to a felt hat?
A. I don't understand that.
Q. What is the objection to a felt hat in the manufacture of shoddy; I mean, objectionable in relation to sanitary conditions.
A. It is old material, and I don't think it is fit to use, and I don't think a human being has any license to sleep on it.
Q. But that would apply to any old material, wouldn't it?
A. Absolutely.
Q. That is your objection, then, to a felt hat?
A. I didn't dwell particularly on felt hats. I said there was old socks, underwear and other materials, as well as felt hats, that I saw.
Q. But every time that you have been on the stand in this case, you have talked about felt hats, haven't you?
A. I have mentioned felt hats the same as anything else.
Q. You don't think that a felt hat is any worse than a pair of old socks, for instance, do you?
A. No; I don't think it is quite as bad.
Q. And still you know that all these second-hand materials that you have described are used in many forms of industry, don't you?
A. No, I don't know that.
[fol. 275] Q. Were you here yesterday in Court?
A. Yes.
Q. Did you hear Mr. Dean testify?
A. Who is Mr. Dean?
Q. Mr. Dean is the man that represented the American Woolen Company.
A. I didn't hear much of his testimony. You couldn't hear it from the rear end of the room; he spoke too low.
Q. Suppose I told you that he testified that in their shoddy mills in Norwich they constantly used underclothing and woolen stocks in the making of shoddy, what would you say to that?
A. I am not surprised at that.
Q. You are not surprised to hear that they use woolen socks in the manufacture of shoddy for the textile trade, are you?
A. Well, what do you mean by the textile trade?
Q. I mean, the manufacture of cloth.
A. I never knew that they used woolen socks for that purpose, no.
Q. Do you have a disinfecting plant down at your place?
A. Yes.
Q. What kind of a plant?
A. A steam disinfecting plant.
Q. Who makes it?
A. We make it ourselves.
Q. What do you use it for?
A. For sterilizing materials that we are remaking for the trade.
Q. You remake or sterilize or renovate in some way the mattresses
[fol. 276] from the West Penn Hospital?
A. Yes, sir.
Q. How many of them?

A. I couldn't tell you the number; maybe a hundred or more in a year. We do it for most all the hospitals in the city, and I want to tell you that these hospitals have their own sterilizing plants, and before we get this material they certify to us that they have been sterilized in their plants before they come to us.

Q. What do you sterilize—mattresses and comforters?

A. No comforters; mattresses and feathers.

Q. And you renovate these mattresses that are used in the wards of contagious diseases?

A. After they have been sterilized and sent to us, we do them over practically in the same way.

Q. All the mattresses in the hospitals are renovated in that way, are they?

A. They are supposed to be.

Q. You renovate the mattresses from all the hospitals?

A. Most of them, yes.

Redirect examination.

Mr. Humes:

Q. Your experience in the bedding industry has provided you with a knowledge of the ordinary trade terms and trade designations of material, has it?

[fol. 277] A. Pretty much so; yes, sir.

Q. Did you hear the testimony of Mr. Howard Palmer yesterday or the day before?

A. I heard him on the stand, yes, sir.

Q. In that testimony, with reference to Exhibit "B," he testified that the label "Manufactured of new material filling 100 per cent new dark cotton carded" was a trade designation for the kind of material that is in there, which contains a very large percentage of wool. Did you ever hear of such a trade designation of that material?

A. Never did, until I heard it here.

Q. In the trade, would a shoddy comforter be properly labeled as 100 per cent new dark cotton carded, a shoddy comforter containing a large percentage of wool?

A. It would not be legally so marked in Pennsylvania.

Q. But in the trade. I am talking about in the trade.

A. I have never heard that term in the trade.

Q. You never have?

A. No, sir.

Recross-examination.

Mr. Smith:

Q. The purpose of labeling these comforters is to prevent the sale of comforters filled with an inferior quality of filling, is it not?

A. Repeat that, please.

[fol. 278] Q. The purpose of labeling these comforters is to prevent the sale of comforters filled with an inferior quality of filling. I mean the quality as indicated on the label.

A By labeling it new cotton?

Q Do you know the purpose of labeling these comforters, as to quality?

A. I should say to show actually what is in the comforter.

Q. But suppose there is a label which indicates that it is a cotton filling, and a good part of it is wool, the filling is really considered of a higher grade than a cotton filling?

A. No.

Q. Why not? Isn't the wool usually considered as of a higher quality than cotton?

A. I would say there was something wrong with the sale if it would be classed with a low grade of cotton.

Q. You would?

A. Yes.

Q. Could you look at that and tell us if there is any wool in that filling, and if it is a low grade of wool?

A. I couldn't tell you without a microscopic examination.

Q. You said, or you would say, that there was a low quality or something the matter with the wool because of that label?

A. Well, I would mean by that that the wool certainly was of no use for any other purpose, or it wouldn't be in a cheap grade of cotton stock like that, or shoddy.

[fol. 279] Q. I don't exactly understand why you say that. Suppose that the woolen rags and the cotton rags had come in all together, they would be made into shoddy, wouldn't they?

A. If the wool rags that were in that lot of material were of very much value as wool, to be reused again as wool, they would be very carefully assorted from the cotton material there.

Q. You have no experience, or haven't had lately, in the comforter trade, have you?

A. I never did have any experience in the comforter trade.

Q. Then how do you know that that isn't the proper designation of that filling that is shown by that label?

A. Well, it is an article of bedding, and in all my experience in the bedding business, I have never heard it termed that way, shoddy as cotton stock.

Q. But what do you know about shoddy in the bedding business?

A. I have used enough of it to know something about it.

Q. In mattresses?

A. Yes; previous to the law that went into effect here in Pennsylvania.

Q. To go back to the linters that you use in your mattresses. You said some of them were blown into the mattresses?

A. Yes, sir.

Q. Do you clean those linters?

A. Yes.

Q. How?

[fol. 280] A. By a condenser and cyclone system.

Q. How do you do that?

A. We put them through machines, so that if there is any foreign matter or heavy dirt or excessive dust in the linters, that is taken away from that stock before the stock is used to be blown in the mattress.

Q. That is just the way shoddy is cleansed, isn't it?

A. No, sir.

Q. You heard the description here of the cyclone connected with this picker, didn't you?

A. No.

Q. You didn't?

A. No.

Q. Did you not see a cyclone or big boiler down there connected with the picker at the Louisville Company's works?

A. Yes; but the cyclone doesn't clean it.

Q. What does it do to it?

A. A cyclone is merely a matter of release for the suction fan that takes the stock away from the machines and deposits the stock in a bin or other receptacle.

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[fol. 281] H. E. Gross, a witness called on behalf of Respondent, having been duly sworn, testified as follows:

Direct examination.

Mr. Humes:

Q. Where do you live?

A. 84 Prospect Avenue, Ingram.

Q. What is your business?

A. The manufacture of mattreses.

Q. How long have you been engaged in that business?

A. I have worked at it all my life. That is forty years. I have been in business for myself for twenty-five years.

Q. You are familiar with the various materials that are used in the bedding industry?

A. Yes, sir.

Q. Did you hear the testimony here of Mr. Howard Palmer the other day, with reference to the filling in that comforter, Exhibit "B"?

A. Yes, sir.

Q. I ask you if, in your experience in the bedding industry, you ever heard of the designation 100 per cent new dark cotton carded for the material that appears in that comforter?

A. I never heard of that name.

Q. In the bedding industry and the labeling of bedding, if a [fol. 282] shoddy filled comforter contained a mixture of cotton and wool, would the tag "Manufactured of new material filling 100 per cent new dark cotton carded" be a correct label for the article?

A. I would say not.

Cross-examination.

Mr. Smith:

Q. What do you make?
A. Mattresses.
Q. Do you make any comforters?
A. No, sir
Q. Have you handled any comforters?
A. No, sir.
Q. Have you ever dealt in comforters?
A. No, sir.
Q. Did you look at that filling of that Exhibit "B"?
A. No.
Q. Do you mind looking at it now?
A. Certainly I will look at it if you wish me to.

(Witness examines the filling of Exhibit "B.")

Q. Do you have any such thing as that in the mattress trade?
A. No, sir; not at the present day.
Q. Did you ever have any such thing as that?
[fol. 283] A. Yes, fifteen years ago we used to use it.
Q. No matter how it is labeled, is there anything the matter with that?
A. There is nothing the matter with it as a shoddy.
Q. Could you tell by feeling it or looking at it as to the percentage of wool or cotton in it?
A. No, sir, I could not.
Q. You do not undertake to say that that definition, 100 per cent new dark cotton carded, may not have a specific meaning in the comforter trade, do you?
A. Well, I wouldn't interpret it as that.
Q. You do not know that it may not have a meaning?
A. I never heard of it.

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STIPULATION RE TESTIMONY OF CERTAIN WITNESSES

It is agreed by and between counsel that if George H. Johnson, of the Mellon Institute, were present in Court as a witness, he would testify that he analyzed a portion of the filling of the mattresses, Exhibits "A," "B" and "C," his designation of the comforters being as follows: Exhibit "B" is designated by him as Exhibit 1, for analysis purposes; Respondent's Exhibit "C" is de-[fol. 284] signated as No. 3, for analysis purpose, and Respondent's Exhibit "A" is designated as No. 2, by Mr. Johnson, for analysis purposes.

And it is agreed that if Mr. Johnson were present, he would testify that his analysis of the contents of these samples are in conformity with the statement submitted for record.

Mr. McGuire: It should be stated, I think, that we have no means of knowing that these are the samples that were analyzed.

The Court: The statement that has been put on the record, that if the witness were present, he would testify as set forth in this statement, probably would cover any suggestion.

The following is the analysis referred to above:

Sample #1

30.4205 gms. beaker and sample.
29.9002 gms. beaker.

.5202 gms. sample.

30.1500 gms. beaker and sample after caustic boil.
29.9003 gms. beaker.

.2497 gms. cotton, etc.

$\frac{.2497}{.5202} \times 100\% = 48\%$ cotton; $100\% - 48\% = 52\%$ wool.

[fol. 285]

Sample #2

74.2232 gms. beaker and sample.
73 0452 " beaker.

1.1780 gms. sample.

73.5155 gms. beaker and sample after caustic boil.
73.0453 " beaker.

.4703 gms. cotton, etc.

$\frac{.4703}{1.1780} \times 100\% = 39.9\%$ cotton, etc.; $100\% - 39.9\% = 60.1\%$ wool.

Sample #3

30.7800 gms. beaker and sample.
29.9003 " beaker.

.8798 " sample.

30 3115 gms. beaker and sample after caustic boil.
29.9003 " beaker.

.4112 " cotton, etc.

$\frac{4112}{.8798} \times 100\% = 47.8\%$ cotton; $100\% - 47.8\% = 52.2$ wool.

[fol. 286] MATTHEW P. FREDERICK, a witness called on behalf of Respondent, having been duly sworn, testified as follows:

Direct examination.

Mr. Humes:

Q. You are chief of the Division of Bedding of the Pennsylvania Department of Labor and Industry, are you?
A. Yes, sir.
Q. Did you take some sample comforters out to Dr. Johnson, at the Mellon Institute, for the purpose of securing an analysis?
A. I did.
Q. I ask you if Exhibits "A," "B" and "C" are the comforters that you took out?
A. They are.
Q. When you took them out, they were designated and numbered as 1, 2 and 3, were they not?
A. Right.
Q. And you arranged with Dr. Johnson to make the analysis. Were you present all the time he was making it?
A. I was not. I was present when he opened them and took the samples out.
Q. And those are the three comforters out of which those samples came?
A. Yes.
Q He just took one sample out of each one of them?
[fol 287] A. Yes.

Cross-examination.

Mr. Smith:

Q. Did you make any particular examination of the samples?
A. No, sir.
Q. You just put your hand in and took them out?
A. He opened them and took out the samples himself.
Q. You took the three comforters out there?
A. Yes.
Q. And he just opened them and took out the comforters?
A. Yes.
Q. How much did he take out?
A. A handful, I should say.
Q. And in one place only, I suppose?
A. I think so.

Respondent rests.

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STIPULATION RE ACT OF 1913

It is agreed by and between counsel that the Act of 1913, and the Amendment of 1915, did not apply to comforters; that comforters were first covered by Pennsylvania legislation by the Act of 1923.

[fol. 288] Dr. CHARLES E. A. WINSLOW, recalled in rebuttal, testified as follows:

Direct examination.

Mr. Smith:

Q. Since you were on the stand yesterday and after you were examined by Mr. Humes, did you gather together some authorities in relation to what you testified to yesterday, as to the vitality of germs in materials?

A. I did; yes, sir.

Q. Who is Alva H. Doty?

A. Dr. Doty was for a number of years the Port Physician at the Port of New York, the state officer who had charge of enforcing the Federal quarantine at that place. It is now in charge of Federal officers, but at that time it was delegated to a state officer.

Q. Is he recognized as an authority in matters of public health?

A. He is one of the leading public health men of the country.

Q. I read to you from a paper marked "Medical Record, a weekly journal of medicine and surgery": Do you know that paper?

A. I do.

Q. Is it a standard paper?

A. It is a good paper.

Q. I call your attention to an article purporting to be by Dr. Doty, "Outlook and Problems of Public Health," and I read to you from it: [fol. 289] "The disinfection of apartments at the termination of infectious diseases was formerly held to be absolutely necessary. It was believed that pathagenic organisms in an active state were present in these rooms, and that disease could be contracted by those entering the apartment. This was so generally believed that discharges of the patient were not promptly destroyed and other details of cleanliness were largely overlooked. Everything was left for so-called terminal disinfection. Now we know that protection depends upon the prompt destruction of infective agents in their active state as they come from the body of the sick. This it will be seen is closely associated with cleanliness. If this is carefully attended to, we need fear little from the room itself." Is that the idea that you had in your mind when you were testifying yesterday?

A. It is; yes, sir.

Q. Do you know Dr. Doty's book called "Prevention of Infectious Diseases"?

A. I do.

Q. I call your attention to a paragraph on page 4: "Practical sanitarians, who have given the matter careful study, are slowly but surely accumulating conclusive proof that most infectious diseases are only in very rare instances transmitted by clothing and other textile fabric." Is that your idea of the best thought on the subject [fol. 290] today, among practical health officers?

A. It is.

Q. I call your attention to a book entitled "How to Avoid Infection," by Charles V. Chapin, M. D. Do you know Dr. Chapin?

A. I do.

Q. Is he an authority?

A. He is. He is the health officer of Providence, Rhode Island, and perhaps on the whole the ablest and most constructive health officer in this country.

Q. I call to your attention this paragraph, on page 23 of this book: "One of the most encouraging of the newer facts which have been learned about the contagious diseases is that the germs, after leaving the body, have a far shorter life than was formerly supposed. The old belief was that they became attached to the walls and furniture of the sick room, to clothing, books and toys, and thereon retained their vitality for years, and that the articles thus became a most important source of danger. Hence arose the almost religious faith in the need for an efficacy of fumigation, which rite was believed to do away with all future danger." Is that in accordance with your opinion?

A. It is.

Q. I call your attention to a paragraph, on page 26: "For many years it was the fashion for so-called sanitarians to hold that the chief sources of infection were to be found in decaying organic [fol. 291] matter, and in the germs which cling long to articles which had been in contact with the sick. Among the most important results of modern scientific research is the discovery that disease germs do not grow outside of the body, and that, discharged from the body, they usually die rapidly. It is the fresh secretions which are to be guarded against. Persons, not things, are to be feared." Is that in accordance with your opinion?

A. Yes, sir.

Q. I call your attention to a book, entitled "A Textbook of General Bacteriology," by Edwin O. Jordan, Ph. D. Do you know him?

A. I think he is professor of Bacteriology at the University of Chicago.

Q. Is he an authority on matters of public health?

A. Yes. That is one of the two or three best tectbooks on bacteriology which we have.

Q. I call your attention to a paragraph on page 126: "As a rule, however, those bacteria that produce disease are more or less closely adapted to a parasitic existence, and pass from one animal body to another, with only a relatively brief sojourn in the external world. The large majority of the bacteria causing infection in men are able, under ordinary conditions, to survive only for a very limited period apart from the human body." Is that in accordance with your opinion and of the general opinion now?

[fol. 292] A. It is.

Q. I call your attention to a book called "Preventive Medicine and Hygiene," by Milton J. Rosenau. Do you know him?

A. I do. He is professor of Preventive Medicine and Hygiene at Harvard.

Q. Is he a standard authority?

A. He is a very eminent man. That is the book that we use in our class as a textbook. It is one of the two or three best textbooks on that subject; that is, on the general subject of preventive medicine.

Q. I call your attention to a paragraph, on page 465: "Fomite (from fomes, touch-wood or tinder) is defined as any substance capable of absorbing, retaining, or transporting infectious germs. Fomites usually refer to inanimate things such as bedding, clothing, and so forth. The term was especially used in connection with yellow fever, in which the greatest variety of objects, such as a lot of hair, the false bottom of a trunk, coffee sacks, a mattress, and letters were said to be the fomites which touched off an epidemic. Woolen clothing or the doctor's beard are popular and supposedly dangerous examples of fomites. The importance of inanimate objects as vectors of pathagenic micro-organisms is assuming a min roll in the minds of most sanitarians. Thus we no longer think of such objects as books, umbrellas, floors, walls, curtains and furniture as likely to transmit the virus of disease. We know that [fol. 293] most of the pathogenic bacteria soon die when exposed to dryness and other adverse conditions of environment. We now concentrate our efforts more upon handkerchiefs, towels, bed and body linen, drinking cups, remnants of food, toys, pencils, tableware, and other objects that have recently been mouthed by the infected individual. Such fomites may readily transfer fresh, live and virulent virus from one person to the next." Is that in accordance with your opinion?

A. It is.

Q. And recognized by the authorities in matters of public health

A. Yes.

Q. I call your attention to a book entitled "Nelson Looseleaf Living Medicine," published by Thomas Nelson & Sons. Is that a standard publication?

A. It is.

Q. I call your attention to a paragraph on page 69, under the heading "Control of Germ Diseases," which I believe was written by you, you said?

A. Yes.

Q. I call your attention to this paragraph: "Another type of disease transmission, now recognized as of comparatively slight importance, is that once supposed to take place by fomites. No sharp line can be drawn between contact and fomites infection, since it is impossible to fix a definite time limit for the disappearance of the [fol. 294] last disease germ. We may be certain, however, that danger diminishes progressively with the laps of time, and that long distance transmission by fomites, or transmission by fomites infected weeks or months previously, is a very unlikely event. The only important exception to this rule is to be found in the case of anthrax. Since this disease germ forms spores, it may be carried for a long time in hides and wool, and has been so carried half way round the globe." That is your statement, in your opinion, in relation to this matter, is it?

A. Yes, that is still my opinion.

Q. I think you testified as to anthrax yesterday, did you not?

A. I did, yes, sir.

Q. That anthrax is more likely to be found in wool than in garments or rags of any sort?
A. Yes.

Cross-examination.

Mr. Humes:

Q. Then we are justified in concluding, are we not, from your testimony, that in view of this modern theory, you have been promulgating, that very much of the activity of municipalities and states along the line of sanitation and health, is entirely unnecessary?
A. I should not say very much. I think some of it is.
Q. Isn't a very considerable amount unnecessary, if your theory is correct?
[fol. 295] A. No, I should say not.
Q. Sterilization then is not necessary, except in the case of articles that have been very recently in contact with human beings. Is that true?
A. I should say yes, with the exception of things like wool and hides, which come from countries where anthrax exists.
Q. You mean, native wood or natural wool?
A. Yes.
Q. Virgin wool, in other words?
A. Yes, sir.
Q. How long a period then would you say after rags and scrap have ceased to be in contact with human beings was sterilization no longer necessary?
A. I should say that a month would be a safe limit.
Q. Then rags, after they have been stored for a month, regardless of the place where they are stored, if they do not come in contact with human beings, after a month require no sterilization?
A. Yes, I should think that was correct.

Plaintiff rests.
Testimony closed.

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[fol. 296] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION AND ORDER RE TESTIMONY—Filed May 5, 1925.

And Now, to wit, May 5th, 1925, comes E. Lowry Humes, Attorney for the Appellant and advising the Court that he desires that the testimony of all witnesses shall be reproduced in the exact words of the witnesses, moves the Court to direct that in the record of the Appeal this day allowed, that all of the testimony be reproduced in the exact words of the witnesses.

E. Lowry Humes, Attorney for Appellant.

Order

And Now, to wit, May 5th, 1925, upon presentation of the foregoing motion in open Court, it is ordered and directed that in the record of said Appeal, the testimony of all witnesses shall be reproduced is the exact wrods of the witnesses.

Per Curiam. S.

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[fol. 297] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed March 9, 1925

SCHOONMAKER, District Judge:

This is a suit in equity in which the plaintiff is seeking to enjoin the enforcement of a Pennsylvania statute as an unconstitutional enactment. The Pennsylvania Act, approved June 14, 1923 (P. L. 1923, pg. 802), prohibits the use of a material known as "shoddy" in the making or renovating of mattresses, pillows, bolsters, featherbeds, comfortables, cushions, and articles of upholstered furniture, but does permit the use of secondhand materials (other than "shoddy" and the material from which "shoddy" is constructed) in all such articles of bedding and upholstered furniture, provided such second hand materials have been properly sterilized and disinfected by processes approved by the Pennsylvania authorities. (Sec. 2 of Act.)

"Shoddy" is defined in this act as follows: "The word "Shoddy" shall mean any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up, or ground up."

The act also regulates the processes of disinfection and steriliation where such a course of treatment is provided or permitted by [fol. 298] the Act, and also requires a tag purchased by the manufacturer from the State of Pennsylvania, to be affixed to all articles coming within the purview of the act which are offered for sale in Pennsylvania. Violations of the act are punishable by fine or imprisonment.

Shoddy, the use of which is prohibited by this act, is made from old rags and waste fabric materials such as are commonly collected throughout the country by rag-pickers or peddlers, and also from waste fabrics commonly called "tailors' clippings" that come from tailor shops and plants that manufacture clothing for human wear. These rags and the other materials from which shoddy is made are fed into a machine which shreds the material and tears it apart and reduces it to a fibrous form and makes it into a fluffy material more or less like the original material before it is used in the industries. This shoddy, so manufactured, is used in the industries generally as a filler for bedding, cushions, and upholstered furniture,

and also enters into the manufacture of blankets and cloth used for human garments. So extensive has become its use in this field that there is hardly a blanket or piece of cloth now manufactured which does not have some shoddy in its makeup. The 1920 census discloses that millions of pounds of shoddy each year are used in the bedding and clothing industries. In most cases it is used without first being sterilized or disinfected.

The plaintiff, a Connecticut corporation, at several plants in that State, manufactures bed comfortables and has a large trade in that article of commerce which extends over the whole of the United States. The plaintiff has been in the same business for about fifty years. They use shoddy such as prohibited by the Pennsylvania Act, as a filler for bed comfortables. They produce annually about three million comfortables, of which about three quarters of a million [fol. 299] are filled with shoddy. In the United States, the plaintiff constitutes practically the whole industry, so far as concerns the manufacture of bed comfortables filled with shoddy made from materials collected by the rag pickers and collectors of the country. In 1923, its Pennsylvania trade amounted to $558,773.60, of which $188,984.60 was the price paid to it for shoddy-filled comfortables now prohibited by the Pennsylvania statute.

There is a process of sterilization in general use known as the "American Kinyoun Francis" method, which might be applied to materials used in the making of shoddy, which will remove therefrom all danger of disease infection. This process is successfully applied to bedding and mattresses used in hospitals, and the plaintiff has at its plant the necessary sterilizing apparatus of this type, which will properly sterilize the materials to be used in shoddy at the cost of an eighth of a cent per pound. The type of apparatus used therefor is manufactured by the American Sterilizer Company, and it is conceded by the defendant that it will effectively sterilize and disinfect the materials of which shoddy is made. Some twenty seven states have legislated upon the subject of bedding and the materials which may be used in the manufacture of bedding; in some states the use of shoddy has been absolutely prohibited.

The defendant is Chief of the Bureau of Inspection of the Department of Labor and Industry of Pennsylvania, and is in charge of the branch office of the Department in Pittsburgh, Pennsylvania; as such, he is charged with the enforcement of the Pennsylvania statutes.

The plaintiff asserts that the Pennsylvania statute, in its prohibition of the use of shoddy as a filler for bed mattresses and com- [fol. 300] fortables, unjustly discriminates against it, and therefore this statute denies to it the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution. The plaintiff further contends that the Pennsylvania Act is unconstitutional in its provision as to sterilization and tagging of bedding, imposing an unnecessary and undue burden on interstate commerce.

The main assault of the plaintiff against this act, however, was directed against the prohibition of the use of shoddy as a filler for bed comfortables. The act in this particular is challenged as an

unreasonable and arbitrary exercise of the police power of the state in three particulars, i e.,

(a) It prohibits entirely the use of shoddy, a recognized commercial commodity, whether made from new or secondhand materials, in the making of mattresses, comfortables, etc.

(b) It prohibits all shoddy but permits the use of secondhand materials after sterilization, although it is acknowledged that all shoddy, new or old, may be made harmless by sterilization.

(c) It prohibits shoddy in the making of comfortables, but does not prohibit it in the making of blankets, or in many other articles of commerce, of equally intimate daily use by people.

With the wisdom of the legislation complained of, the courts have no concern; that is purely a legislative question.

The courts have repeatedly held that inasmuch as government is organized for the purpose, among others, of protecting public health and morals, it cannot divest itself of that power, and that the Fourteenth Amendment is not intended to interfere with the proper exercise of that power by the state. Mugler vs. Kansas 123 U. S. 623; Butchers Union Company vs. Crescent City Co. 111 U. S. 746 (751); Barbier vs. Connolly, 113 U. S. 27; Yick Wo vs. Hopkins, 118 U. S. 356; Powell vs. Pennsylvania, 127 U. S. 678. But, as stated by Mr. Justice McReynolds, in Meyer vs. Nebraska, 262 U. S. 396 (400): "Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is [fol. 301] subject to supervision by the courts. "Lawton vs. Steele 152 U. S. 133 (137)." Thus a state may not, under the guise of police power, arbitrarily interfere with private business or impose unreasonable or unnecessary restrictions upon it. Lawton vs. Steele, 152 U. S. 133 (137); Meyer vs. Nebraska, 262 U. S. 390 (400) Burns Baking Co. vs. Bryan, 264 U. S. 504 (513).

The plaintiff, in the instant case, has invoked constitutional protection, and it therefore becomes the duty of the court to determine whether the challenged provisions are reasonable or not. Meyer vs. Nebraska supra: Welch vs. Swasey, 214 U. S. 91 (105): Dobbins vs. Los Angeles, 195 U. S. 223 (226); Connolly vs. Union Sewer Pipe Co. 184 U. S. 540 (556); Lawton vs. Steele, supra; Burns Baking Co. vs. Bryan supra.

The Pennsylvania statute prohibits the use of shoddy in bed mattresses and comfortables. If there were any question as to whether shoddy could be rendered harmless by disinfection or sterilization, then the judgment of the legislature as to the necessity of prohibiting shoddy absolutely could not be questioned by the court: Price vs. Illinois, 238 U. S. 446 (452). Here, there is no debate on that subject at all. It is conceded by all parties that shoddy may be rendered perfectly harmless by sterilization. The only reasonable ground on which to rest the statutory provision prohibiting the use of shoddy is the danger to health from the infected condition of the material from which it is made. Take away that danger and the reason for enacting the prohibitory statute utterly fails. The state authorities defend the prohibition of the use of shoddy, as provided for in the

state, on three grounds: (1) Shoddy as now used as a filler for mattresses and comfortables is a menace to public health. (2) It is [fol. 302] impracticable to permit the use of a sterilized shoddy filler for mattresses and comfortables, because of the difficulties in the way of inspecting properly such articles for the purpose of determining whether the shoddy has been properly sterilized. (3) The cost of sterilization is too great to admit commercially of sterilization, because new materials for filler can be more cheaply bought.

As to the first contention of the plaintiff, there is a dispute as to whether shoddy, as now used as a filler for mattresses and comfortables, is a menace to health. Much testimony was introduced by the plaintiff from eminent authority to show that it was not a danger to public health. On the other hand, testimony was offered by the state authorities to show that shoddy was a menace to public health and that twenty-seven states had passed regulations as to its use, some going so far as to prohibit absolutely the use of shoddy, as in the Pennsylvania statute. In view of the different opinions which the authorities hold on this subject, we think that the legislative judgment must control. But, if we concede that shoddy should be prohibited as a menace to public health, can the present act be sustained, in view of the fact that it applies only to mattresses, cushions, comfortables, and articles of upholstered furniture, when there is no prohibition of blankets and cloth for clothing? If shoddy is dangerous to health in a mattress or comfortable, why is it not equally so in a blanket or piece of cloth, both of which are likely to come as closely into contact with the human body as a mattress or comfortable. The defendant says that classification does away with the complaint of unjust discrimination in the prohibition of shoddy in mattresses and comfortables. The act applies with equal force upon all members of the same class; namely, all manufacturers of mattresses and comfortables. The trouble is that the classification sought to be established is not a proper one. It is unfair and does not really cover all members of the same class. It does not apply to shoddy used in a blanket which is equally an article of bedding with [fol. 303] mattresses and comfortables; and all these articles, insofar as they use shoddy, are in the same category so far as hazard to the public health is concerned. If shoddy is dangerous when contained in articles which a man uses at night when in bed, is not the shoddy-made garments which he wears in the daytime equally dangerous? This act in its present form undoubtedly discriminates unjustly against the person who uses shoddy for mattresses and comfortables, in favor of the one who uses it for blankets and clothing, all of which come intimately in contact with the human body, and if infected, would each be a source of danger to public health. The defendant contends that there is a difference in the two classes, in that shoddy used as a filler for mattresses and comfortables will retain the elements dangerous to health, whereas that used in blankets and clothing will, by the very process of manufacture, have the dangerous elements eliminated. If this is so, it is but a recognition by the state of the fact that sterilization of shoddy will eliminate any dangerous elements to the public health. We have here a very

clear illustration that the act unjustly and unreasonably discriminates against the manufacturer of mattresses and comfortables in favor of the manufacturer of blankets and clothing, so far as the use of shoddy is concerned. Thus, we have the state saying: "Sterilized shoddy is harmless; you may use it in blankets and clothing; but you must not use it in mattresses or comfortables." There is no justification for so arbitrary a distinction. But, even if classification is a proper one, is it reasonable to probihit absolutely the use of shoddy as a filler for mattresses and bed comfortables, when it is conceded that such shoddy may be rendered harmless by well known process of sterilization which is now in general use?

This brings to the second contention of the defendant, who justified this absolute prohibition on the ground that even conceding the fact that sterilization is effective to render shoddy harmless so far [fol. 304] as concerns public health, it is impracticable to permit the use of sterilized shoddy, for the reason that the character of mattresses and comfortables makes it impracticable, after they have been made, to inspect them for the purpose of ascertaining whether the shoddy filler has been sterilized. If that is a valid objection, it applies equally to the present act. It is just as difficult now to inspect a comfortable for the purpose of ascertaining whether shoddy has been used as filler as it would be to inspect in order to ascertain whether sterilized shoddy were used as filler. The same complaint might also apply to the provision of the statute which permits the use of second-hand material other than shoddy as filler for mattresses and comfortables, provided they have been properly sterilized. It is unreasonable to say: "We will permit sterilized second-hand materials, but not sterilized shoddy, when both may be inspected with equal facility when bound up in a mattress or comfortable."

On the third point, the cost of sterilization, little need be said. There is testimony that it may be accomplished at a cost of an eighth of a cent per pound of material, but whether the cost is great or little, the mere cost of sterilization cannot be used as a police regulation to sustain an absolute prohibition of shoddy.

The views we have arrived at find support among the authorities. It is said in the case of People vs. Weiner, 271 Ill. 80:

"The act does not attempt to prohibit the use of second-hand mattresses but does prevent their being again used in the manufacture of other mattresses which are to be sold. To prohibit absolutely the use of such material in the manufacture of mattresses for sale when not inherently dangerous and when it may be rendered safe by reasonable regulation is an invasion of personal and property rights within the meaning of the Federal and State constitutions. By this act the state has deprived the citizen of the lawful use of his property not injurious or dangerous to others."

In Hannibal vs. St. Joseph R. R. Co. vs. Husen, 95 U. S. 465, the Supreme Court said:

[fol. 305] "Many acts of a State may, indeed, affect commerce, without amounting to a regulation of it, in the constitutional sense

of the term. And it is sometimes difficult to define the distinction between that which merely affects or influences and that which regulates or furnishes a rule for conduct. There is no such difficulty in the present case. While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, &c., from entering the state; while for the purpose of self protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the state, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce."

In connection with our opinion on this branch of this case, we may say that we are not unmindful of the decisions of the Supreme Court which have sustained absolutely the state statutes which prohibit the sale of certain commodities among which may be noted; the oleomargarine cases: Powell vs. Penna. 127 U. S. 678; the liquor case: Crane vs. Campbell, 245 U. S. 304; and the boric acid case: Price vs. Illinois, 238 U. S. 446. In those cases there was no possibility of the character of the commodities in question being changed by sterilization so as to render them harmless. Those cases there are not parallel with the instant case, where all possible harmful qualities of shoddy may be removed by sterilization.

We now come to consider the other features of plaintiff's objections to this Pennsylvania statute; namely, the requirements as to the approval by the enforcing authority of the State of the process of sterilization used in the manufacturing of bedding, and in the provisions for the tagging and labeling of articles manufactured. So far as the sterilization clause of this act is concerned, the plaintiff is occupying rather an inconsistent position. To urge that the pro- [fol. 306] hibition of shoddy in a comfortable is unreasonable and arbitrary, when shoddy can be rendered perfectly harmless by a well known process of sterilization, which process the plaintiff has in fact installed in its plant and can operate at a cost of one eighth of a cent per pound of material used, and then to say that the state cannot regulate the process of sterilization, is not consistent. The plaintiff urges, first, that no sterilization is necessary, because the materials from which shoddy is manufactured, by the time they are bound up into comfortables, have lost all elements dangerous to health. Considerable testimony was offered on this score by the plaintiff; but this is entirely a debatable question, and one on which the judgment of the court cannot be substituted for that of legislation. As was said in the case of Brice vs. Illinois, 238 U. S. 446, where the question at issue is a debatable one, the judgment of the legislature must govern.

The plaintiff also complains of the requirements of the Pennsylvania statute which requires the approval by the state authorities of the process of sterilization, and alleges this is an undue burden upon commerce. We do not so regard it. Sterilization is merely

one of the steps in the process of manufacturing, and manufacturing is not commerce. Crescent Cotton Oil Co. vs. Mississippi, 257 U. S. 129. And the fact itself that an article, when in process of manufacture, is intended for export to another state does not render it an article of interstate commerce. Coe vs. Errol, 116, U. S. 517; New York Central etc. Co. vs. Mohney, 252 U. S. 152.

It seems to us a very proper requirement that if the goods are to be sold in Pennsylvania, the legislature of Pennsylvania has a right to exact that the processes of sterilization used at or before the time [fol. 307] the goods come into Pennsylvania shall be such as the enforcing authorities of Pennsylvania shall approve. There is nothing unusual in this. We hold it to be a fair and just police regulation.

We can find no fault, either, with the tagging and labeling features of the statute of which the plaintiff complains. To prevent fraud and deception is one of the universally recognized purposes for which police power may properly be invoked. We think that the evidence that was introduced as to tags and labels that appeared upon comfortables which the plaintiff has already sold within the state of Pennsylvania is sufficient to justify the regulations of the Pennsylvania statute in this regard. The label which the plaintiff put on a shoddy-built comfortable offered in evidence in this case was quoted "new dark cotton carded" is, as we view the case, a misstatement of facts. It is a fair illustration of the necessity for the requirements of the Pennsylvania statute.

Neither can we find fault with the fact that Pennsylvania charges $10 per thousand for the tags which it requires to be affixed to articles of bedding. The statute itself is primarily an inspection statute and the price of the tags naturally constitutes the fees of inspection. There is no evidence that this charge is excessive in any way, and we are of the opinion that this provision of the statute is not open to objection. This method of exacting the fee for inspection is not a novel one, but is similar to the system adopted by the State of Indiana in an act which provided for the regulation and inspection of feeding stuffs, which system was sustained by the United States Supreme Court in the case of Savage vs. Jones, 225 U. S. 501.

We, therefore, conclude on the whole case that only insofar as this statute absolutely prohibits the use of shoddy does it impinge [fol. 308] upon the constitutional rights of the plaintiff, and that the defendant should be restrained only insofar as this statute absolutely prohibits the use of shoddy in the manufacture of bedding. We arrive at this conclusion in view of the admitted fact that sterilized shoddy is not dangerous to the public health.

A decree may be submitted in accordance herewith.

[fol. 309] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed Apr. 21, 1925

On Reargument

SCHOONMAKER, Judge:

Since the filing of our opinion herein holding the Pennsylvania Act of June 14, 1924, P. L. 802, to be unconstitutional, insofar as it absolutely prohibits the use of shoddy as a filler for mattresses and bed comfortables, the defendant asked for a re-argument on the whole case. In view of the fact that counsel for defendant was taken ill during the progress of the trial of the case, and tho he continued in spite of that fact to conduct the case to its conclusion, we felt in duty bound to grant the request for re-argument in order to permit counsel for defendant, when in good health, to present fully his views in oral argument. Since that argument, we have very carefully reviewed the whole case, both the testimony and the law, and we find no reason to change our former findings and conclusions.

This case is so clearly distinguishable from the case of Powell vs. [fol. 310] Pennsylvania, 127 U. S. 678, on which the defendant mainly relies, that a restudy of it fails to convince us of any error. In the Powell case there was an issue of fact, i. e., the injuriousness to public health of the oleaginous substances covered by the act. That was purely a question for the legislature. There was no admitted process by which any dangerous elements in these oleaginous substances might be removed. Here it is admitted that there is no danger to health in sterilized shoddy. Therefore, the basis on which to justify the prohibition of the Pennsylvania statute fails.

We pointed out in our original opinion herein certain discriminatory features of this act between blankets and mattresses and comforters. Defendant is of the opinion that we overlooked the fact that the legislature had put mattresses and comforters into a class and that the act bore equally upon all members of that class. But, even if we concede that the classification made by the act is a proper one, yet the act offends against the 14th Amendment to the Constitution in its unreasonable prohibition of the use of all shoddy in mattresses and bed comforters when it is an admitted fact that sterilized shoddy bears no danger to public health.

We therefore conclude that we correctly ruled this case in the first instance and find no reason to change our previous opinion. A decree may be submitted in accordance therewith.

[fol. 311] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed Apr. 23, 1925

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered. adjudged and decreed as follows, viz:

1. That the Act of Assembly of the Commonwealth of Pennsylvania, approved June 14, 1923 (1923 P. L. 802), relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease deliver, or consign, insofar as it absolutely prohibits the use of shoddy in bedding by defining shoddy as any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up, and by providing that no person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture any material known as "shoddy", or any fabric or material from which "shoddy" is constructed, violates the constitutional rights of the plaintiff, and is unconstitutional and void.

[fols. 312 & 313] 2. That the defendant, D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, his attorneys agents and employes, and any and all persons whosoever, be and they are hereby enjoined and restrained from enforcing or in any manner attempting to enforce or carry out the provisions of the Act of Assembly of the Commonwealth of Pennsylvania approved June 14, 1923 (1923 P. L. 802), insofar as the Act prohibits the use of shoddy or any fabric or material from which shoddy is constructed in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture; and that they are further enjoined and restrained from instituting or causing to be instituted, or proceeding with any prosecution against The Palmer Brothers Company, plaintiff, or any of its customers, dealers, or selling agencies in Pennsylvania on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver, or consign in sale or lease, any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture in the making, remaking, or renovating of which shoddy is used, or any fabric or material from which shoddy is constructed.

Dated April 23, 1925.

Per Curiam. S.

To this decree defendant excepts and at his request bill of exceptions is sealed.

F. P. Schoonmaker, Judge. (Seal.)

[fol. 314] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

To the Honorable the Judges of said Court:

Now, this 5th day of May, 1925, comes D. E. Weaver, Chief of the Bureau in Pittsburgh, of the Department of Labor and Industry of the Commonwealth of Pennsylvania, the above named defendant, and conceiving himself aggrieved by the order of decree of this court entered on the 23rd day of April, 1925, in the above entitled cause, declaring that the Act of Assembly of the Commonwealth of Pennsylvania, approved June 14, 1923 (P. L. 802) violates the constitutional rights of the plaintiff and is unconstitutional and void in so far as it prohibits the use of shoddy in bedding by defining shoddy as any material which has been spun into yarn, knit or woven into fabric, and subsequently cut, torn up, broken up or ground up, and by providing that no person shall employ or use in the making re-making or renovating of any mattress, pillow, bolster, feather bed, comfortables, cushions or articles of upholstered furniture, any material known as "shoddy" or any fabric or material from which "shoddy" is constructed, and enjoining and restraining the defendant from enforcing or in any manner attempting to enforce or carry out the provisions of said Act in so far as the Act prohibits the use of "shoddy" or any fabric or material from which shoddy is constructed in the making, remaking or renovating of any mattress, pillow, bolster, feather-bed, comfortable, cushion or up-[fol. 315] holstered furniture; and enjoining and restraining the defendant from instituting, causing to be instituted or proceeding with any prosecution against The Palmer Brothers Company, the plaintiff, or any of its customers, dealers or selling agencies in Pennsylvania, on account of selling, leasing, offering for lease or sale, or having in possession with intent to sell, lease, deliver or consign in sale or lease, any mattress, pillow, bolster, feather-bed, comfortable, cushion or article of upholstered furniture in the making, remaking or renovating of which shoddy is used, or any fabric or material from which shoddy is constructed, hereby prays that an appeal may be allowed to him from the said Order, Decree and Injunction to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith. Defendant further prays that a transcript of the papers, records and proceedings upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

E. Lowry Humes, George W. Woodruff, James O. Campbell,
Attorneys for Defendant.

[fol. 316] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

And now, this 5th day of May, 1925, the appeal is allowed upon giving bond conditioned as required by law, in the sum of $500.00.

Per Curiam. S.

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[fol. 317] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 5, 1925

And now, to-wit, May 5th, 1925, comes D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor And Industry of the Commonwealth of Pennsylvania, by its attorneys, E. Lowry Humes, George W. Woodruff, Attorney General of the Commonwealth of Pennsylvania, and James O. Campbell, Deputy Attorney General of the Commonwealth of Pennsylvania, and in connection with his petition for appeal in the above entitled case, files the following assignment of errors.

1. The Court erred in making the following Order and Decree:

"Decree

"This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered adjudged and decreed as follows, viz:

"1. That the Act of Assembly of the Commonwealth of Pennsylvania, approved June 14, 1923 (1923 P. L. 802) relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and con-[fol. 318] signing thereof, and the possession thereof with intent to sell, lease, deliver, or consign, insofar as it prohibits the use of shoddy in bedding by defining shoddy as any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up, and by providing that no person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture any material known as "shoddy", or any fabric or material from which shoddy is constructed, violates the constitutional rights of the plaintiff, and is unconstitutional and void.

"2. That the defendant, D. E. Weaver, Chief of the Bureau of Inspection in Pittsburg of the Department of Labor and Industry

of the Commonwealth of Pennsylvania, his attorneys, agents and employes, and any and all persons whatsoever, be and they are hereby enjoined and restrained from enforcing or in any manner attempting to enforce or carry out the provisions of the Act of Assembly of the Commonwealth of Pennsylvania approved June 14, 1923 (1923 P. L. 802), insofar as the Act prohibits the use of shoddy or any fabric or material from which shoddy is constructed in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture; and that they are further enjoined and restrained from instituting, or causing to be instituted, or proceeding with any prosecution against The Palmer Brothers Company, plaintiff, or any of its customers, dealers, or selling agencies in Pennsylvania on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver or consign in sale or lease, any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture in the making, remaking, or renovating of which shoddy is used, or any fabric or material from which shoddy is constructed."

2. The Court erred in refusing to dismiss the plaintiff's Bill of Complaint.

Wherefore, appellant prays that the Decree and Order of said District Court be reversed, and that the Plaintiff's Bill of Complaint be dismissed.

E. Lowry Humes, George W. Woodruff, James O. Campbell, Attorneys for Defendant.

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[fols. 319-320½] Bond on Appeal for $500.00—Approved and filed May 6, 1925; omitted in printing

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[fol. 321] In United States District Court

[Title omitted]

Waiver of Citation

The United States of America, ss:

To D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor & Industry of the Commonwealth of Pennsylvania, Greeting:

And now, to wit, May 5th, 1925, the appeal in the above entitled case having been taken and perfected in open court, the issuance and service of the citation is hereby waived by the appellee.

Reed, Smith, Shaw & McClay, Frank L. McGuire, Attorneys for Appellee.

[fol. 322] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed May 8, 1925

To J. Wood Clark, Esquire, clerk:

You will please prepare and certify a transcript of the Record in the above entitled case, for the use of the Supreme Court of the United States, including therein the following:

Plaintiff's Bill of Complaint;
Answer of defendant;
The evidence taken at the hearing on bill in Answer, reproducing the testimony in the exact words of the witnesses;
Order of court directing reproduction of testimony in the exact words of the witnesses;
Opinions of the court below;
Final Order, Decree and Injunction;
Bill of Exceptions sealed for defendant;
Petition for Appeal to the Supreme Court of the United States;
Order of Court granting petition for appeal;
Assignment of errors;
Appeal Bond;
[fol. 322½] Waiver of citation by appellee;
This præcipe on behalf of the appellant for making up the transcript of the record.
All other pleadings, proceedings and orders which may become a part of the record in said case.

Clerk's certificate.

E. Lowry Humes; George W. Woodruff, Attorney General; James O. Campbell, Deputy Attorney General, Attorneys for Appellant.

---

IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD

Now, this 6th day of May, 1925, it is agreed by and between counsel for the parties in the above entitled case that the pleadings, papers, evidence and orders named in the foregoing Præcipe for Transcript of Record on Appeal, shall constitute the record on Appeal to the Supreme Court of the United States.

E. Lowry Humes; George W. Woodruff, Attorney General; James O. Campbell, Deputy Attorney General, Attorneys for Appellant. Edwin W. Smith, Frank L. McGuire, Reed, Smith, Shaw & W. Clay, Attorneys for Appellee.

[fol. 323] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO SUSPEND AND MODIFY INJUNCTION—Filed May 6, 1925

And now, to-wit, May 6, 1925, an appeal having been allowed from the final judgment and decree of this Court to the Supreme Court of the United States, the Court is moved to make an appropriate order suspending and modifying the injunction granted herein during the pendency of the appeal.

E. Lowry Humes, Atty. for Appellant

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[fol. 324] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER MODIFYING DECREE—Filed May 13, 1925

And now, to-wit, May 13th, 1925, an appeal having been allowed from the final judgment and decree of this Court in the above entitled proceeding, to the Supreme Court of the United States, and motion having been made at the time of allowance of said appeal for an order suspending and modifying the injunction issued in said final decree during the pendency of said appeal, and after argument of counsel, and upon due consideration thereof, it is hereby

Ordered and directed that all of said decree and injunction be suspended during the pendency of said appeal except that portion which enjoins and restrains the defendant, D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, his attorneys, agents and employes and any and all persons whosoever "from instituting or causing to be instituted or proceeding with any prosecution" to enforce or carry out the provisions of the Act of Assembly of the [fol. 325] Commonwealth of Pennsylvania, approved June 14, 1923 (1923 P. L. 802) "against The Palmer Brothers Company, plaintiff, or any of its customers, dealers or selling agencies in Pennsylvania, on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver or consign in sale or lease, any mattress, pillow, bolster, feather-bed, comfortable, cushion or article of upholstered furniture" manufactured by the said The Palmer Brothers Company, plaintiff, " in the making, remaking or renovating of which "shoddy" is used, or any fabric or material from which "shoddy" is constructed.

Per Curiam. S.

Endorsed on cover: File No. 31,233. W. Penna. D. C. U. S. Term No. 510. D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, appellant, vs. The Palmer Brothers Company. Filed May 26th, 1925. File No. 31,233.

FILED
NOV 17 1925
WM. R. STANSBURY
CLERK

IN THE

# Supreme Court of the United States

## NO. 510, OCTOBER TERM, 1925

D. E. WEAVER Chief of the Bureau of Inspection, in Pittsburgh of the DEPARTMENT OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, Appellant.

vs.

THE PALMER BROTHERS COMPANY.
a Corporation, Appellee,

## BRIEF OF APPELLANT

Appeal from the District Court of the United States for the Western District of Pennsylvania.

GEORGE W. WOODRUFF,
Attorney General of Pennsylvania,
JAMES O. CAMPBELL,
Deputy Attorney General,
E. LOWRY HUMES,
First National Bank Building,
Pittsburgh, Pa.
Attorneys for Appellant.

JACKSON-REMLINGER COMPANY, 530-540 DUQUESNE WAY, PITTSBURGH, PENN'A

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IN THE

# Supreme Court of the United States

## No. 510, OCTOBER TERM, 1925

D. E. WEAVER, Chief of the Bureau of Inspection in Pittsburgh of the DEPARTMENT OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, Appellant,

vs.

THE PALMER BROTHERS COMPANY, Appellee.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

## I

## Statement of the Questions Involved and the manner in Which They Are Raised

THE QUESTIONS INVOLVED.

1. Does the Pennsylvania statute of June 14, 1923, No. 314, P. L. 802, which relates to mattresses, pillows, bolsters, feather beds, comfortables, cushions and upholstered furniture that are to be used on a couch or other bed for sleeping or reclining purposes; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver or consign, and which

(a) prohibits the use of shoddy in the manufacture thereof;

(b) requires the submission to and the approval by the Commissioner of Labor and Industry of the process of sterilization and disinfection used in the manufacture of certain articles, and the posting of the permit therefor in the office or the place of business of the permittee; and

(c) requires the tagging of all articles covered by the Act, with tags furnished by the Commonwealth of Pennsylvania at the price of Ten and no/100 ($10.00) Dollars per thousand, the proceeds of the sales of said tags to be used to defray the cost and expense of inspection in the enforcement of said act;

violate the 14th Amendment to the Constitution of the United States, or is it a reasonable exercise of the police power of the Commonwealth of Pennsylvania?

2. Is a classification, in a police regulation, of articles of bedding which includes all articles of stuffed and filled bedding, arbitrary and unreasonable because it fails to include products of the textile industry such as blankets and cloth for clothing?

(Note: In the Bill of Complaint it is averred and in the Court below it was argued that certain portions of the act violate the Interstate Commerce Clause of the Constitution, but it is our understanding that this contention is no longer urged).

THE MANNER IN WHICH THE QUESTIONS ARE RAISED.

The Pennsylvania Act of Assembly, approved the 14th day of June, 1923, the full text of which appears as Exhibit "A" hereto, on Page 42, became effective on January 1st, 1924, and thereupon the Department of Labor and Industry, in the performance of its official duty, proceeded to the enforcement thereof. Palmer

Brothers Company, a corporation of the State of Connecticut, engaged in the manufacture and sale of comfortables, recognizing that its commodities were being manufactured and sold in the State of Pennsylvania, in violation of this Act, filed its Bill in Equity on January 29, 1924, against D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh, Pennsylvania, of the Department of Labor and Industry of the Commonwealth of Pennsylvania, to restrain the enforcement of said statute. An Interlocutory Injunction was asked for and after a hearing before three judges, in compliance with Section 266 of the Judicial Code, the Interlocutory Injunction was refused. From this judgment an appeal was taken by Palmer Brothers Company to this Court at No. 402, October Term, 1924, and the judgment of the Court below was affirmed by this Court (266 U. S. page 588). Thereupon final hearing was had on the Bill before F. P. Schoonmaker, United States District Judge for the Western District of Pennsylvania, and on March 9th, 1925, he filed his Opinion (Record page 151), the concluding paragraph of which is as follows:

> "We therefore, conclude on the whole case that only insofar as this statute absolutely prohibits the use of shoddy does it impinge upon the constitutional rights of the plaintiff, and that the defendant should be restrained only insofar as this statute absolutely prohibits the use of shoddy in the manufacture of bedding. We arrive at this conclusion in view of the admitted fact that sterilized shoddy is not dangerous to the public health. A decree may be submitted in accordance herewith."

A reargument was allowed and on April 21st, 1925, a further Opinion on the reargument (Record page 158), was filed, in which the Court adhered to its previous

Opinion. Pursuant to the Opinions, the Court below, on April 23rd, 1925, entered its final judgment (Record page 159), decreeing that insofar as the Pennsylvania statute of June 14, 1923, P. L. 802, absolutely prohibits the use of shoddy, as defined therein, in bedding, and provides that no person shall employ or use, in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, any material known as shoddy, or any fabric or material from which shoddy is constructed, it violates the constitutional rights of the plaintiff and is unconstitutional and void, and enjoined and restrained the appellant, his attorneys, agents and employees and any and all persons whosoever, from enforcing, or in any manner attempting to enforce or carry out the provisions of said statute insofar as it prohibits the use of shoddy, and from instituting or causing to be instituted, or proceeding with any prosecution against the Palmer Brothers Company, or any of its customers, dealers or selling agencies in Pennsylvania, on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver, or consign in sale or lease, any mattress, pillow, bolster, feather bed, comfortable, cushion, or upholstered furniture, in which shoddy is used, to which judgment and decree the defendant excepted, and at his request, a Bill of Exceptions was sealed. At the time of the allowance of this Appeal, the Court made an Order (Record page 164) modifying the decree in which the final decree was suspended during the pendency of this Appeal, except that portion which enjoins and restrains the appellant, his attorneys, agents and employees from instituting or causing to be instituted, or proceeding with any prosecution against Palmer Brothers Company, its customers, dealers and selling agencies in

Pennsylvania. On May 5th, 1925, assignments of error were filed (Record page 161), and on petition of the Appellant, this Appeal was allowed.

## II.

## Assignments of Error

And now, to-wit, May 5th, 1925, comes D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, by its attorneys, E. Lowry Humes, George W. Woodruff, Attorney General of the Commonwealth of Pennsylvania, and James O. Campbell, Deputy Attorney General of the Commonwealth of Pennsylvania, and in connection with his petition for appeal in the above entitled case, files the following assignment of errors:

1. The Court erred in making the following Order and Decree:

"DECREE

"This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz:

"1. That the Act of Assembly of the Commonwealth of Pennsylvania, approved June 14, 1923 (1923 P. L. 802) relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver, or consign, insofar as it prohibits the use of shoddy in bedding by defining shoddy as any material which has been spun into yarn, knit or

woven into fabric, and subsequently cut up, torn up, broken up, or ground up, and by providing that no person shall employ or use in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture any material known as 'shoddy', or any fabric or material from which shoddy is constructed, violates the constitutional rights of the plaintiff, and is unconstitutional and void.

"2. That the defendant, D. E. Weaver, Chief of the Bureau of Inspection in Pittsburgh of the Department of Labor and Industry of the Commonwealth of Pennsylvania, his attorneys, agents and employees, and any and all persons whatsoever, be and they are hereby enjoined and restrained from enforcing or in any manner attempting to enforce or carry out the provisions of the Act of Assembly of the Commonwealth of Pennsylvania approved June 14, 1923 (1923 P. L. 802), insofar as the Act prohibits the use of shoddy or any fabric or material from which shoddy is constructed in the making, remaking or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture; and that they are further enjoined and restrained from instituting, or causing to be instituted, or proceeding with any prosecution against The Palmer Brothers Company, plaintiff, or any of its customers, dealers, or selling agencies in Pennsylvania, on account of selling, leasing, offering to sell or lease, or delivering or consigning in sale or lease, or having in possession with intent to sell, lease, deliver or consign in sale or lease, any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture in the

making, remaking, or renovating of which shoddy is used, or any fabric or material from which shoddy is constructed."

2. The Court erred in refusing to dismiss the plaintiff's Bill of Complaint.

Wherefore, appellant prays that the Decree and Order of said District Court be reversed, and that the Plaintiff's Bill of Complaint be dismissed.

## III.

## Statement of Case

Palmer Brothers Company, a Connecticut corporation, engaged in the manufacture and sale of bed comfortables, filed its Bill of Complaint in the United States District Court for the Western District of Pennsylvania on January 29, 1924, to restrain the enforcement of the Pennsylvania Statute approved the 14th day of June, 1923, (Exhibit A, page 42). Under the provisions of this statute it became effective January 1, 1924. The Department of Labor and Industry of the Commonwealth of Pennsylvania had commenced the enforcement of the Act and had threatened to proceed against Palmer Brothers Company and their customers who were violating its provisions. The Bill of Complaint prayed that the statute be declared unconstitutional and void and that the defendant who is an officer of the Department of Labor and Industry of the Commonwealth of Pennsylvania and all other persons be enjoined from enforcing any of the provisions of the Act and from instituting or causing to be instituted any prosecutions or proceeding against Palmer Brothers Company or any of its customers, dealers or selling agencies within the State.

The plaintiff also sought an Interlocutory Injunc-

tion which, after a hearing under Section 266 of the Judicial Code was refused. Palmer Brothers appealed from the order refusing the Interlocutory Injunction to this Court at No. 402, October, 1924. On Dec. 8th, 1924, this Court affirmed the judgment (266 U. S. page 588).

After final hearing on the Bill and Answer, much testimony having been taken thereon, the District Court on April 23, 1925, entered a final judgment (Record page 159), from which this Appeal was taken, decreeing that insofar as this Act prohibits the use of shoddy in the articles of bedding designated in the Act, it was unconstitutional and void and enjoining the defendant, his attorneys, agents and employees and any and all persons whosoever, from enforcing or in any manner attempting to enforce or carry out the provisions of said Act insofar as it prohibits the use of shoddy and further enjoining them from prosecuting the plaintiff or any of its customers, dealers or selling agencies therefrom.

To this decree a Bill of Exceptions was sealed for the defendant and upon his petition (Record page 160) this appeal was allowed, the final decree being assigned as error (Record page 161).

The only question involved in this Appeal is as to whether or not the provisions of the Act in question which prohibit the use of shoddy in the articles of bedding designated therein, are so arbitrary, unreasonable and discriminatory, as to violate the 14th Amendment to the Constitution and whether the Legislature exceeded its power in prohibiting the use of shoddy instead of contenting itself with regulations, requiring its sterilization as a condition precedent to its use as a filling in mattresses, pillows, bolsters, feather beds, comfortables, cushions and upholstered furniture that are

to be used on a couch or bed for sleeping or reclining purposes.

## IV.
## Argument of Appellant

The Legislature of Pennsylvania enacted the statute under attack, which appears in full as Exhibit "A" hereof, on page 42, for the purpose of:

(A.) protecting the public health;

(B.) securing the public against fraud and deception.

That these are proper purposes for the exercise of the police power is admitted.

That bedding, on and under which man spends approximately one-third of his life, is a proper subject matter over which the police power should be exercised, has not been denied at any time, during the pendency of this case.

Stuffed articles of bedding, that are, by their very form and nature, so constructed as to conceal their contents from the view and observation of the public and the manufacture of which may be accomplished in such a way and with such skill and secrecy as to baffle ordinary inspection, provide such opportunity for the perpetration of fraud and deceit upon both the consuming public and the public authorities as to make it an especially appropriate and proper subject matter over which the police power should be exercised.

### Protecting Public Health

The Court below, in its Opinion, recognizes the purpose of the Act as proper and that the subject matter thereof bears a reasonable relation to the purpose of protecting the public health, in the following words:

"* * * there is a dispute as to whether shoddy, as now used as a filler for mattresses and comfortables, is a menace to health. Much testimony was introduced by the plaintiff from eminent authority to show that it was not a danger to public health. On the other hand, testimony was offered by the state authorities to show that shoddy was a menace to public health and that twenty-seven states had passed regulations as to its use, some going so far as to prohibit absolutely the use of shoddy, as in the Pennsylvania statute. In view of the different opinions which the authorities hold on this subject, we think that the legislative judgment must control." (Record page 154).

SECURING THE PUBLIC AGAINST FRAUD AND DECEPTION

The Court below, in discussing the tagging and labeling features of the statute, also recognizes that the prevention of fraud and deception is one of the purposes of this legislation, and that its provisions have a reasonable relation to that purpose, when it says:

"To prevent fraud and deception is one of the universally recognized purposes for which police power may properly be invoked. We think that the evidence that was introduced as to tags and labels that appeared upon comfortables which the plaintiff has already sold within the state of Pennsylvania is sufficient to justify the regulations of the Pennsylvania statute in this regard. The label which the plaintiff put on a shoddy-built comfortable offered in evidence in this case was quoted 'new dark cotton carded' is, as we view the case, a mis-statement of facts. It is a fair illustration of the necessity for the requirements of the Pennsylvania statute." (Record page 157).

It is respectfully submitted, however, that the Court erroneously failed to declare that the provisions of the Act prohibiting the use of shoddy in stuffed articles of bedding, had as direct a relation to the legislative purpose of securing the public against fraud and deception, as it had to the protection of the public health.

It being undisputed that the Pennsylvania Legislature, in enacting this statute, exercised the police power for proper purposes and over a subject matter which bears a reasonable relation to those purposes, the due process clause of the 14th Amendment is not violated. The equal protection of the law's clause cannot be violated by this statute unless the classification of articles of bedding embraced within its subject matter is arbitrary and unreasonable. The court below, while holding that the classification is arbitrary and unreasonable because it fails to include blankets and cloth for clothing in the same classification with mattresses, pillows, bolsters, feather beds, comfortables, cushions and upholstered furniture that are to be used on a couch or bed for sleeping or reclining purposes, disregards this conclusion in reaching its judgment and declares the act unconstitutional insofar as the prohibition of the use of shoddy is concerned "even if classification is a proper one."

## History of Legislation

The evil which the Legislature of the State of Pennsylvania sought to reach and remedy was the unhealthy and unsanitary condition that existed in the bedding industry, and the unhealthy and unsanitary product which was coming into the hands of the consuming public, as well as the fraud and deception which was being practiced by those engaged in that branch of the bedding industry that was manufacturing and selling

articles of bedding that were stuffed and filled with material, the character and nature of which was necessarily concealed from the consuming public because of the very form and nature of the article itself. Much knowledge of this evil was and is a part of the common knowledge of mankind. The public prints and the bulletins and publications of health, civic and trade organizations, many of which were offered in evidence at the trial of the case, had brought this evil to the attention of the public. (Record page 136). As early as 1909 legislative action was directed against these evils in the widely separated states of New York and Washington. In 1911 the Ohio Legislature recognized the evil. Minnesota, Wisconsin and Pennsylvania enacted laws to meet this evil in 1913. In 1915 the States of Alabama, California, Colorado, Connecticut, Illinois and Montana proceeded to invoke their police power to abate this evil, and Pennsylvania and Wisconsin, profiting by their experience under their enactments of 1913, amended their laws. Indiana, Michigan and Tennessee recognized the necessity of protecting their citizens against the abuses in this industry in 1917, and Louisiana and New Jersey legislated on the subject in 1918. In addition, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Missouri, North Carolina, Oregon, Utah, Oklahoma, and the municipal authorities of the City of Chicago, each undertook to reach this evil by the exercise of their police powers prior to the enactment of the Pennsylvania Statute of June 14th, 1923, which is under consideration in this case. The Pennsylvania statute of 1913 and its amendments related only to mattresses and it absolutely prohibited the use of shoddy in the manufacture thereof. With the advantage of ten years' experience in the enforcement of that Act, in an effort to eliminate the evils in the bedding industry, as well as a knowledge of the activities in 25 other states where the police power

had already been invoked for the same purpose, the legislature of Pennsylvania, in estimating the extent and character of the evil which confronted it, enacted the Act of 1923, and in this Act, extended their regulations to all articles of stuffed and filled bedding, including comfortables, and with a view of making possible the effective enforcement of the Act, prescribed a new method of tagging and labeling. Since the enactment of the Pennsylvania statute complained of, the State of Maryland has adopted a similar law, and the city of Spokane, Washington, has passed an ordinance on the same subject.

The growth of the bedding industry and the development of the practices which led to such a general recognition of the existence of evil as to require the exercise of the police power by the Legislatures of twenty-seven states and two large cities within a period of fourteen years, demonstrates the wisdom of the words of this court in the case of *Holden vs. Hardy,* 169 U. S. 366, 18 Sup. Ct. 383-385:

> "* * * in passing upon the validity of state legislation under that (14th) amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that, in some of the states, methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizens, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests, while upon the other hand, certain other classes of persons (particularly those engaged in dangerous or

unhealthy employments) have been found to be in need of additional protection."

It is true that all of the twenty-seven states have not approached the common evil in exactly the same manner, nor undertaken to apply the same remedy. The methods adopted in the several states vary as the judgments of men vary. The development of the evils complained of in the bedding industry and the extent and far-reaching effect of the evils themselves have been variously appraised. The evils existing in the industry varied in the different states, depending as to whether it was a producing or a consuming state. Consequently, Legislatures approached the evil from different viewpoints, and with varying convictions as to the extent of the evil and the facility with which it could be abated. This situation was recognized by this court in *Holden vs. Hardy,* 169 U. S. 366, 18 Sup. Ct. 383-388, when it said:

"* * * a large discretion 'is necessarily vested in the Legislature, to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.' *Lawton vs. Steele,* 152 U. S. 133-136, 14 Sup. Ct. 499."

The fact remains, that of the twenty-seven state legislatures which have found it necessary to exercise their best judgment and discretion in legislating upon this admittedly proper subject, twelve states and the City of Spokane, Washington, have prohibited the use of shoddy in the bedding material covered by their statutes, and those sections of the several acts referred to, are printed as Exhibit "B" on page 51 of this Brief. It is therefore apparent that the questions raised in this case are more far reaching in their effect than is evident on the face of the record, and that the affirma-

tion of the judgment of the Court below would have the effect of striking down the legislative enactments of a large number of states.

### Evidence Submitted to the Court

Much testimony was submitted by the appellee and although the assignments of error do not involve the admissability of this evidence, it is respectfully submitted that the particular practice of a given manufacturer, whether he be the plaintiff or a stranger to the record, is neither relevant or material to the issues involved. Much of this testimony relates to the practices, methods and facilities of the plaintiff. One might well suspect, from reading this testimony, that the plaintiff was on trial charged with questionable practices in the conduct of its business, and a reading of the Court's Opinion leaves one under the impression that the Court approached this question on the theory that the statute complained of was an act regulating the use of shoddy as an article of commerce. That the manufacture and sale of comfortables constitutes only a minor portion of the bedding industry covered by the act, yet an indispensible part thereof in a police regulation intended to cover articles of stuffed bedding, if the regulation is to stand the classification test, seems to have been entirely disregarded. In this testimony, however, is found complete vindication of the purposes of the Pennsylvania statute and the direct relation which its regulations bear to those purposes. The character of the material from which the shoddy used in the bedding industry is made, and the carelessness with which it is gathered is evidenced by the following testimony of Frank Palmer who is in charge of the mechanical department of the Palmer Brothers Company, and who testified as follows:

"Q. Before you put the rags into this sterilizer, is there any process of assortment?

A. Yes, the rags are sorted after the bales are opened.

Q. What do you put aside?

A. All manner of stuff that we cannot pick.

Q. What is that?

A. Rubbers, some belting sometimes, hats are too hard, rope." (Record page 66).

During the trial of the case and in its argument in the court below, great emphasis was placed upon the fact that shoddy is a well known and generally used article of commerce, and the Court, in its Opinion emphasizes this fact (Record page 151) and much testimony was introduced relative to the use of shoddy in the textile industry. The testimony, however, clearly establishes, that there is an absolute difference between the shoddy of the textile industry and the shoddy that is used in the stuffed and filled bedding industry.

Samuel C. Dean, Superintendent of the Winchester plant of the American Woolen Company, a witness for the plaintiff, who was permitted to testify at length with reference to the use of shoddy in the textile industry, admitted this difference as follows:

"Q. As you just remarked, the shoddy that is used in the bedding industry is an entirely different grade of shoddy than the shoddy that is used in the textile industry?

A. Absolutely yes." (Record page 96).

The uncontradicted testimony of Edward B. Joachim, a witness for the appellant, was as follows:

"The shoddy that is used in the textile industry is shoddy that can be reclaimed, principally through being carbonized to get the wool out of it, and it is a long fibre, capable of being respun again; but this stock (referring to the shoddy used in the bedding industry) cannot be respun again; it is too short; it is a waste. You take a man in the textile business and you tell him that this is shoddy, and he will say 'No, that is only sweepings.' No, we don't consider that shoddy." (Record page 127).

James A. Newlands, a chemist and bacteriologist, called by the plaintiff, testified inter alia as follows:

"Q. What I am asking you is this: Your knowledge of the material that enters into the bedding materials convinces you, does it not, that bedding materials generally require very careful sterilization and very careful safeguarding, in order to protect public health?

A. Yes, sir, that is true.

Q. The use of bedding material that contains any unhealthy or questionable material would be very dangerous to the public health, would it not?

A. If it were used without such treatment. (Record pages 71 and 72.)

* * * * * * * *

Q. Is it not a fact that public health would be endangered if material such as you saw put in that sterilizer was ground up and not sterilized at all?

A. Yes, there is a possibility of infection." (Recor page 74.)

Howard Palmer, the Secretary of Palmer Brothers

Company, admitted in his testimony, that even in their own establishment, they do not sterilize the shoddy which they call "new shoddy", (Record page 63) and the testimony of George S. Palmer, the president of Palmer Brothers Company justifies the conclusion that the plaintiff is undertaking to strike down legislation enacted to meet an admitted and unquestioned evil in the bedding industry, by adopting in his plant at the eleventh hour, a process of sterilization. He testified as follows:

"Q. Was there ever any attempt until recently, say, to sterilize or disinfect shoddy, in so far as the manufacture of comfortables is concerned?

A. Not that I know of.

Q. Was there ever in your plant?

A. Not until recent years." (Record page 26).

The only effective means available, for protecting the public and enforcing the law is by inspection and that inspection must be accomplished, in the case of commodities manufactured outside of the state of Pennsylvania, in the retail markets of the state, and the testimony clearly establishes that it is impracticable and impossible to determine by such inspection as can be made in these retail markets, whether or not shoddy has been actually sterilized. James A. Newlands, a bacteriologist, one of the plaintiff's witnesses admitted that it would not be possible for an inspector visiting retail establishments having stocks of bedding materials such as comforters, to determine by any inspection in that store, whether or not the material had ever been sterilized. (Record page 74).

Mr. Edward B. Joachim, the chief of the Bedding Division of the Department of Labor and Industry, testified as follows:

"Q. Is it ever possible to tell by inspection, whether the material has been properly sterilized or not, after it goes into retail markets of Pennsylvania?

A. No sir, no man can do that. It is absolutely impossible, because the very next day it may have come in contact with some animal or something like that, and it is impossible to determine that thing. The claim is made that it is sterilized, and it isn't, half the time." (Record page 134 and 135.)

Mr. Joachim further testified as follows:

"Owing to the impossibility, after a quantity of rags has been ground up, to determine whether they were new rags or old rags, it was deemed advisable, in order to have conditions safe for health and protect the human against the introduction of filth and disease, that shoddy should be prohibited. We had a great deal of difficulty in getting proper statements on articles of the character of filling material. There was a universal practice at that time that this shoddy was marked all new cotton, and I was able to prosecute quite a number of individuals in Philadelphia because they had taken the gunnysacking which surrounds cotton bails in which the cotton is shipped, and in which all waste materials are shipped, and had ground that up and called that cotton, regardless of the fact that these coverings had been used in transportation in dirty freight cars and in storage in damp cellars and there was no sterilization and disinfection. * * * I can testify that I never saw a truthful statement made on any article which was filled with shoddy." (Record page 123.)

In the trial of the case, there was offered in evi-

dence, a comfortable manufactured by the plaintiff which was filled with shoddy but which bore the label "New dark cotton carded", and the evidence disclosed that in spite of the label it was all shoddy and contained more than 50% wool shoddy. (See analysis Record page 145.)

It was this evidence which led the court below to declare in its Opinion as follows:

> "We think that the evidence that was introduced as to tags and labels that appeared upon comfortables which the plaintiff has already sold within the state of Pennsylvania is sufficient to justify the regulations of the Pennsylvania statute in this regard. The label which the plaintiff put on a shoddy-built comfortable offered in evidence in this case was quoted 'new dark cotton carded' is, as we view the case, a misstatement of facts. It is a fair illustration of the necessity for the requirements of the Pennsylvania statute." (Record page 157.)

### Classification in the Statute.

It is difficult to reconcile the conclusion of the Court with the reasoning found in the Opinion. The Court finds, in view of the different opinions as to whether shoddy, as now used as a filler for mattresses and comfortables, is a menace to health, that "the legislative judgment must control" (Record page 154), thereby admitting that legislation as to the use of shoddy in the bedding industry bears a relation to the public health. The Court however, proceeds to condemn the Act because:

> "the classification sought to be established is not a proper one. It is unfair and does not really cover all members of the same class. It does not

apply to shoddy used in a blanket which is equally an article of bedding with mattresses and comfortables; and all these articles, insofar as they use shoddy, are in the same category so far as hazard to the public health is concerned. If shoddy is dangerous when contained in articles which a man uses at night when in bed, is not the shoddy-made garments which he wears in the daytime equally dangerous? This act in its present form undoubtedly discriminates unjustly against the person who uses shoddy for mattresses and comfortables, in favor of the one who uses it for blankets and clothing, all of which come intimately in contact with the human body, and if infected, would each be a source of danger to public health. * * * There is no justification for so arbitrary a distinction". (Record page 154 and 155).

It is apparent from this reasoning of the Court below that the Court approached this case with the thought in mind that the subject matter of the Act in question was shoddy rather than the bedding industry. Otherwise there could be no justification for holding that cloth for clothing should be classified with articles of bedding. The Court's contention that blankets must be classified with articles of stuffed and filled bedding, raises a somewhat different question. Blankets are a product of the textile industry. They are manufactured by a process absolutely different and entirely distinct from the process used in the manufacture of articles of stuffed and filled bedding and they are marketed in a different form. The shoddy and other material which is used in their manufacture, is first spun into thread or yarn. That thread or yarn is woven into a blanket. The blanket is subjected to what is known as the fulling process and is washed and scoured, and unless a white blanket, made of the washed and

scoured yarn, is wanted, it is dyed. Thereupon it goes into the retail markets. At all times it can be readily handled and inspected. It can be and frequently is subjected to the purifying effect of the sun's ray, and it can be and frequently is washed and laundried, as other textiles are. On the other hand, articles of stuffed and filled bedding have their contents secreted and concealed within ticking and covers that are well and readily calculated to conceal the nature and character of their contents and to baffle inspection, (unless the article itself is damaged in the inspection process) and to provide easy opportunity for the practice of all sorts of fraud and deception upon the consuming public. The testimony of Samuel C. Dean, Superintendent of the Winchester plant of the American Woolen Company, offered by the plaintiff, shows the processes used in the textile industry where shoddy is reclaimed and establishes the very clear distinction between blankets and other textiles and the commodities covered by the statute under consideration. He testified as follows:

"Q. I mean, it is spun into yarn and then woven into cloth?

A. Correct.

Q. What processes does that go through before it finally reaches the market?

A. After it is taken off the loom, it is inspected for specks, and imperfect places, and so forth. It is fulled—in other words, washed, scoured; that is, in our particular line of trade; it is not in all trades.

Q. I am speaking about the business that you are familiar with, and that you are handling?

A. Yes.

Q. It is scoured?

A. It is what we call 'fulled'. That brings it up and cleanses it. It is then folded up and inspected and sent away to the trade.

Q. Do you sterilize these clips and the rags that come into your place before you use them?

A. No, sir.

Q. You don't even sterilize them?

A. No.

Q. After it is spun into cloth, what happens to it?

A. I don't just understand what you want. It is finished.

Q. This is spun into yarn?

A. Yes.

Q. And it is scoured?

A. Yes, after it is in the piece of goods.

Q. It is not scoured until after it is in the piece?

A. No.

Q. After it is spun into yarn, it is woven into cloth?

A. Yes." (Record page 98.)

We respectfully submit that the distinction between blankets and articles of stuffed bedding is so clear that a classification which excludes blankets is not only reasonable, but is absolutely essential to intelligent regulation and supervision.

LEGISLATIVE DISCRETION IN MAKING CLASSIFICATION

It has been repeatedly held by this Court that the state legislatures have a wide discretion in classifying subjects for police regulation.

> "Legislatures, as we have seen, have the constitutional power to make unwise classification." *Heath & Milligan Mfg. Co., vs. North Dakota,* 207 U. S. 338, 28 Sup. Ct. 114, 120.

> "In order to sustain a classification made by the legislature, the court need not be sure it has reached the correct and complete explanation of the reasons for the classification; but the classification must stand, unless it is demonstrated beyond a reasonable doubt that it could not possibly be explained on reasonable grounds." Syllabus in *Ward and Gow vs. Krinsky,* 259 U. S. 503, 42 Sup. Ct. 529.

> "Classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis, * * * and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification,—and is not a mere arbitrary selection.'" *Connolly vs. Union Sewer Pipe Co.,* 184 U. S. 540, 22 Sup. Ct. 431, 439, 440.

EQUAL PROTECTION OF THE LAWS.

Inasmuch as the Pennsylvania legislation made a classification "which bears a reasonable and just relation to the act" in question, it cannot be seriously con-

tended that the appellee or any other person has been denied the equal protection of the law. The prohibitions, restrictions, regulations, penalties and burdens fall equally on all persons similarly situated.

This Court, in the case of *Magoun vs. Illinois Trust and Savings Bank,* 170 U. S. 283, 18 Sup. Ct. 594, 598, said:

> "The clause of the Fourteenth Amendment especially invoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been, and probably never can be, precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.' *Kentucky Railroad Tax Cases,* 115 U. S. 321, 6 Sup. Ct. 57. It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hays vs. Missouri,* 120 U. S. 68, 7 Sup. Ct. 350. Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration, it may be safely said that the rule prescribes no rigid equality, and permits to the discretion and wisdom of the state a wide latitude, as far as interference by

this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile vs. Kimball,* 102 U. S. 704, that this Court is not a harbor in which can be found a refuge from ill advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that the hardship, impolicy, or injustice of state laws is not necessarily an objection to their constitutional validity.'"

In the case of *Powell vs. Commonwealth,* 127 U. S. 678, 8 Sup. Ct. 992, 997, this court said:

> "The objection that the statute is repugnant to the clause of the Fourteenth Amendment forbidding the denial by the state to any person within its jurisdiction of the equal protection of the laws is untenable. The statute places under the same restrictions, and subjects to like penalties and burdens, all who manufacture or sell, or offer for sale, or keep in possession to sell, the articles embraced by its prohibitions, thus recognizing and preserving the principle of equality among those engaged in the same business. *Barbier vs. Connelly,* supra; *Soon Hihg vs. Crowley,* 113 U. S. 703, 5 Sup. Ct. Rep. 730; *Railway Co. vs. Humes,* 115 U. S. 519, 6 Sup. Ct. Rep. 110."

It is apparent, however, that even were the Court right in its findings that the classification is arbitrary, the conclusion reached by the Court is fatally defective. The conclusion of the Court is that the only provision of the Act which violates the 14th Amendment is the provision which absolutely prohibits the use of shoddy in the articles covered by the Act. Yet every provision of the Act is based upon the same classification and therefore if the classification is arbitrary the equal protection of the laws clause of the 14th Amendment is

violated by the entire Act, and the entire Act must fall.

### Basis of Judgment of Court Below

The Court below, after deciding that the classification is arbitrary drops that subject and ignores the logical conclusion to be drawn from the adjudication and apparently denounces the statute on another ground by propounding the following interrogatory and findings:

> "But, even if classification is a proper one, is it reasonable to prohibit absolutely the use of shoddy as a filler for mattresses and bed comfortables, when it is conceded that such shoddy may be rendered harmless by well known process of sterilization which is now in general use? This brings to the second contention of the defendant, who justified this absolute prohibition on the ground that even conceding the fact that sterilization is effective to render shoddy harmless so far as concerns public health, it is impracticable to permit the use of sterilized shoddy, for the reason that the character of mattresses and comfortables makes it impracticable, after they have been made, to inspect them for the purpose of ascertaining whether the shoddy filler has been sterilized. If that is a valid objection, it applies equally to the present act. It is just as difficult now to inspect a comfortable for the purpose of ascertaining whether shoddy has been used as filler as it would be to inspect in order to ascertain whether sterilized shoddy were used as filler. The same complaint might also apply to the provision of the statute which permits the use of second-hand material other than shoddy as filler for mattresses and comfortables, provided they have been properly sterilized. It is unreason-

able to say: 'We will permit sterilized second hand materials, but not sterilized shoddy, when both may be inspected with equal facility when bound up in a mattress or comfortable.'" (Record page 155.)

It is difficult to understand the Court's position on this point. While it undoubtedly relates only to an alleged inconsistency in the remedies applied by the legislature to the various evils recognized in the stuffed bedding industry, the Court has apparently attributed to it, unwarranted significance. The appellee believes that the Court was of the opinion that the 14th Amendment required the legislature to apply exactly the same regulations to every article covered by the statute, regardless of the varying degrees of evil and danger, connected with their use, respectively.

Under the definitions in the Act, second-hand materials are materials whose identity and prior use can be readily determined and, as known and recognized in the industry, is confined almost entirely to material formerly used as bedding and reused only in remaking and renovating. Except when remade and renovated for the owner, the use of this material is limited. Shoddy, however was, and where still permitted, is extensively used and in the process of manufacture, its identity and prior use is absolutely destroyed and its very nature facilitates the practice of fraud and deceit, through which the public can easily be victimized both physically and financially.

In this connection the following testimony of Howard Palmer, the Secretary of the Appellee company, is conclusive:

"Q. • • • Now I am asking you if you can determine from inspection, or if anyone can, the prior use that that (shoddy) material has had?

A. No, indeed." (Record page 57).
and in discussing the contents of a shoddy filled comforter George S. Palmer, the President of the Company, said, "We never know the exact contents". (Record page 36).

If we correctly interpret the view of the Court below on this point, the revision of the Act to meet its objections would still leave us with an unconstitutional statute, because of the absence of a requirement that new material be sterilized, and owing further to the fact that it is absolutely necessary to regulate the use of feathers as a filling for bedding in a different way than some other materials are regulated. We respectfully submit that the fallacy of this feature of the Court's opinion is apparent.

The supervision which the judiciary may exercise over the act of the legislature relates to the purpose thereof, the relation which the subject matter has to the purpose and the question as to whether or not the burdens fall equally on all persons similarly situated. The exact character of the burden, in other words, the remedy prescribed for the evil sought to be abated, is for the legislature.

### Legislative Power to Determine Remedy

The question as to whether or not the Legislature of the Commonwealth of Pennsylvania exercised good judgment in enacting the measure complained of is immaterial for the purposes of this case.

> "At any rate, exact wisdom and nice adaptation of remedies are not required by the Fourteenth Amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it."

*Heath and Milligan Manufacturing Company vs. North Dakota,* 207; U. S. 338, 28 Sup. Ct. 114, 119.

"If the subject for the exercise of police power is legitimate, the Legislature may adopt such measures as are necessary to make its action effective, and they may be either regulatory or prohibitory, and either in the form of general directions or detailed measures against a particular article. The power of the Legislature in the proper exercise of its police power to prohibit an article is not effected because the article may be truthfully labelled or that the law will result in destroying the value of property devoted to the manufacture of the article."

*State vs. Emery,* 189 N. W. 564.

"The legislature is entitled to estimate degrees of evil, and to adjust its legislation according to the exigency found to exist. And, applying familiar principle, it cannot be said that the legislature exceeded the bounds of reasonable discretion in classification when it enacted the prohibition in question relating to foods and compounds sold as food preservatives."

*Price vs. Illinois,* 238 U. S. 446, 35 Sup. Ct. 892, 895.

A RULING CASE

The Appellant respectfully urges that this case is clearly ruled by the case of *Powell vs. Commonwealth,* 127 U. S. 678, 8 Sup. Ct. 992, 995. In that case the Pennsylvania Act of May 31st, 1885, prohibited the manufacture or sale, or possession with intent to sell, of oleomargarine, and this court, in sustaining the Act, said:

"'Every possible presumption,' Chief Justice Waite said, in speaking for the Court, in *Sinking Fund* cases, 99 U. S. 718, 'is in favor of the validity of a statute and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.' * * * Whether the manufacture of oleomargarine, or imitation butter, of the kind described in the Statute, is or may be conducted in such a way, or with such skill and secrecy, as to baffle ordinary inspection, or whether it involves such danger to the public health as to require, for the protection of the people, the entire suppression of the business rather than its regulation in such manner as to permit the manufacture and sale of articles of that class that do not contain noxious ingredients, are questions of fact and of public policy which belong to the legislative department to determine. And as it does not appear upon the face of the statute, or from any facts of which the court must take judicial cognizance, that it infringes rights secured by the fundamental law, the legislative determination of those questions is conclusive upon the courts. It is not a part of their functions to conduct investigations of facts entering into questions of public policy merely, and to sustain or frustrate the legislative will, embodied in statutes, as they may happen to approve or disapprove its determination of such questions. The power which the legislature has to promote the general welfare is very great, and the discretion which that department of the government has, in the employment of means to that end, is very large. * * * The legislature

of Pennsylvania, upon the fullest investigation, as we must conclusively presume, and upon reasonable grounds, as must be assumed from the record, has determined that the prohibition of the sale, or offering for sale, or having in possession to sell, for purposes of food, of any article manufactured out of oleaginous substances or compounds other than those produced from unadulterated milk, or cream from unadulterated milk, to take the place of butter produced from unadulterated milk, or cream from unadulterated milk, will promote the public health, and prevent frauds in the sale of such articles. If all that can be said of this legislation is that it is unwise, or unnecessarily oppressive to those manufacturing or selling wholesome oleomargarine as an article of food, their appeal must be to the legislature, or to the ballot box, not to the judiciary. The latter cannot interfere without usurping powers committed to another department of government."

We respectfully submit that the correct rule in this case can readily be prescribed by substituting in the opinion of this Court in the Powell case, the prohibited article in the statute under consideration for the prohibited commodity in that case. The court below undertook to distinguish between the cases of *Powell vs. Pennsylvania,* 127 U. S. 678 among others and the case at bar, as follows:

"In those cases there was no possibility of the character of the commodities in question being changed by sterilization so as to render them harmless. Those cases there are not parallel with the instant case, where all possible harmful qualities of shoddy may be removed by sterilization.". (Record page 156.)

There is no distinction between the cases. The Court below entirely overlooked the fact that the Court in the Powell case held that the question of the wholesomeness of the oleomargarine was immaterial. In the oleomargarine case a much stronger case against the statute is presented, if the theory and contention of the Court below is correct, than in the case at bar, for in the former there is and can be no dispute but that a perfectly pure, wholesome and healthful product can be made. In spite of this fact this Court held it immaterial. In the case of shoddy, the evidence clearly establishes that the protection of public health requires its regulation and at least its sterilization and the Court below recognizes the propriety of such a requirement and that fraud and deception is practiced in the handling of it.

The Powell case did not sustain a prohibition of the sale of unwholesome oleomargarine. It prohibited the sale of oleomargarine regardless of its wholesomeness because it was a commodity the manufacture of which was conducted in such a way and with such secrecy as to baffle ordinary inspection, thereby making it possible to impose upon the public by selling an unwholesome article and making it difficult for the people to know just what they are buying. The inspection of oleomargarine is a much simpler process than the inspection of articles of stuffed bedding. Access can be easily gained to the former, while the contents of the latter cannot be even visualized without the damage and possible destruction of the covering of the article within which is concealed and secreted the material which admittedly requires inspection and the evidence conclusively establishes that even after gaining access thereto "ordinary inspection" will not disclose whether or not the absolutely necessary process of sterilization has been

applied. Certainly the distinctions in these two cases are without a legal difference.

The court below, in repudiating the Powell case as a ruling case, adopts as authority for its judgment the opinion of the Supreme Court of the State of Illinois, in the case of *People vs. Weiner,* 271 Ill., 74, (L. R. A. 1916, C. 775).

The case at bar is clearly distinguished from that case, and none of the objections raised by the Illinois Court can be directed against the Pennsylvania statute. In the Illinois case, a dealer sold a second hand felt mattress. The statute prohibited the use of second hand material in making any mattress, quilt or bed comfortable, and the sale thereof. Another section, however, provided that:

> "Nothing herein shall prohibit any person from remaking or renovating, or employing others to remake or renovate for him, any mattrass (mattress), quilt, or bed comforter for his own use, but all material used for filling in the remaking or renovating of any mattrass (mattress), quilt or bed comforter, together with the cover thereof, shall be first sterilized,"

and tagged. The court held that the act permitted persons to do for their own use, provided the materials were sterilized, that which it denied to the manufacturer and dealer. In the case at bar there is no such discrimination between individual citizens and manufacturers or dealers. Neither is there a prohibition against either the use or sale of second hand bedding if it is sterilized, as required by the act, but on the contrary, the act expressly provides for the very thing that the Illinois court declared to be proper and necessary. The second objection of the court to the statute was that it was class legislation because the act was confined

to mattresses, quilts and bed comforters, and did not include and apply to pillows, and that consequently, it made a discrimination between the manufacturers of, and dealers in these several articles. No such discrimination exists in the Pennsylvania statute, as it covers all of these articles.

It is interesting to note that the Illinois court denounced the classification in that case because it failed to include pillows which are stuffed articles of bedding. No suggestion is made that blankets should have been included to avoid an arbitrary classification as is contended in the case at bar.

The case of *Hannibal & St. Joseph R. R. Co. vs. Husen* 95 U. S. 465, is also cited at length by the court as supporting its judgment. The statute under consideration in that case was held to violate the Interstate Commerce clause of the Constitution and the 14th Amendment was not involved. In the case at bar the Court below denies emphatically that the Pennsylvania statute violates the Interstate Commerce Clause yet cites the Husen case as sustaining its conclusions under the 14th Amendment. Undoubtedly it was erroneously cited.

### Opinion of the Court Below Based on Erroneous Premise

We believe that the error made by the Court below is due to the faulty premise on which its adjudication is based. This premise is set forth by the Court below in its Opinion, as follows:

> "The plaintiff, in the instant case, has invoked constitutional protection, and it therefore becomes the duty of the court to determine whether the challenged provisions are reasonable or not. *Meyer vs. Nebraska* supra: (262 U. S. 396); *Welch vs.*

*Swasey,* 214 U. S. 91 (105); *Dobbins vs. Los Angeles,* 195 U. S. 223 (226); *Connolly vs. Union Sewer Pipe Co.* 184 U. S. 540 (556); *Lawton vs. Steele, supra;* (152 U. S. 133) (137); *Burns Baking Co. vs. Bryan* supra: (264 U. S. 504) (513). (Record page 153.)

It is respectfully submitted that the Court misinterpreted the scope of its duty. The question for judicial determination is not the reasonableness of the challenged provisions, which in this case is the entire act (for the plaintiff in his bill denounces it in its entirety), but the more limited question as to whether the challenged provisions had a reasonable relation to the purposes of the Act. That the cases cited by the Court deny rather than establish the large discretionary judicial power which the Court below assumed to exercise, is shown by the following analysis of the cases themselves.

The case of *Meyer vs. Nebraska,* 262 U. S. 390, involved the Nebraska statute prohibiting teaching in anything but the English language, and the court said:

> "The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. * * * There seems no adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activity."

In other words the Act was denounced because it had no purpose that the state was competent to legislate upon in the exercise of the police power. In the case at bar, the purpose was admittedly within the

police power, and the legislation itself bears a positive relation to that purpose.

The case of *Welch vs. Swasey,* 214 U. S. 91, involved the validity of a Massachusetts statute restricting the height of buildings in Boston, and classified the city into commercial and residential districts, and invoked different requirements in the respective districts, and the court held that this statute had relation to the purpose sought to be accomplished by the legislature, namely, "safety, comfort and convenience of the people." In this case the court also justified the legislature in being influenced by "æsthetic" reasons. A casual glance at the shoddy material in evidence in the case at bar suggests that æsthetic reasons, in addition to the more potent ones, might very properly influence the legislation in this case.

*Dobbins vs. Los Angeles,* 195 U. S. 223 grew out of an ordinace prohibiting the erection of gas plants in certain districts, and under it, it was sought to prevent the completion of a gas plant which had already been authorized under the then existing law by the proper municipal authorities, after the gas company had expended large sums in such construction. It involves very different considerations from the case at bar.

*Connolly vs. Union Sewer Pipe Company,* 184 U. S. 540, involved an Illinois anti-trust statute exempting agricultural products and live stock under certain conditions, from its prohibitions. The Court held that it violated the equal protection of the laws clause of the constitution because of the classification which distinguished agricultural products and live stock from other articles, and the court said, just as the appellant has been urging upon the court in the case at bar:

"that classification must always rest upon some

difference which bears a reasonable and just relation to the Act, in respect to which the classification is proposed."

The Act in respect to which the classification was proposed in that case had for its purpose the prevention of combinations and agreements, or in other words, conspiracies intended to enhance prices, restrict production and to limit competition. No article of commerce and especially articles of food necessary for the sustenance of life could be properly distinguished from other necessary articles of commerce, and the court held that this classification vitiated the Act, by depriving some people of the equal protection of the laws, in other words, of the same exemptions which were secured to persons raising agricultural products and live stock. It is respectfully submitted that this case lays down the rule as to the test to be applied to a classification which sustains the position of the appellant in the case at bar, in which the classification of articles of bedding does bear a very positive relation to the purposes of the Act.

*Lawton vs. Steele,* 152 U. S. 133 involved the validity of a New York statute declaring fishing nets used in violation of law, to be a nuisance, and providing for their summary destruction. The court sustained the constitutionality of the Act. There was no allegation that the Act deprived anyone of the equal protection of the laws, but it was contended that it violated the due process clause, and the court said in sustaining the Act, "the extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union. It is universally conceded to include everything essential to the public health, safety and morals, and to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public

nuisance. * * * The state may interfere wherever the public interests demand it, and in this particular, a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. The preservation of game and fish, however, has always been treated within the domain of the police power. * * * If the object to be accomplished is conducive to the public interest, it (the legislature) may exercise a large liberty of choice in the means employed."

*Burns Baking Co. vs. Bryan,* 264 U. S. 504, involved a Nebraska statute prohibiting the sale of bread by loaves of weights other than fixed by the statute, but allowed a tolerance in excess of such specified weights of two ounces per pound, and required that the specified weights shall be the average weight of not less than 25 loaves, and that such average shall not be more than the maximum nor less than the minimum prescribed. That the Act related to a proper subject matter, and had a proper purpose was recognized by the court, and admitted by the parties, and the Act was sustained except for the purpose of providing for the average weight of twenty-five loaves. The court held that this provision was not calculated to effectuate the purpose of the Act, which was to protect the public against imposition and fraud by short weights. It is apparent that the provision as to weight, together with an allowance for tolerance was the only provisions of the Act which bore any relation to the purpose of the Act, and this part was sustained. It is interesting to note, however, that even in this case Mr. Justice Brandeis, with the concurrence of Mr. Justice Holmes, filed a dissenting opinion, holding that even the average weight provision was so related to the proper purposes which led to the enactment as to be a proper exercise of the police power.

## Conclusion

The appellant believes that the court below entirely misapprehended the test to be applied to the statute under consideration and approached and considered the case from the legislative rather than the judicial viewpoint. To argue the merit of this legislation or the efficacy of the remedies invoked by the legislation would be to adopt the error into which the court has already fallen. That appeal must be made to either the legislature itself or to the state's electorate. The judicial question under the due process clause is as to whether or not the Pennsylvania Statute of June 14, 1923, is a proper exercise of the police power. If it was enacted for a proper purpose and if the subject matter bears a reasonable relation to that purpose, it is due process. Both of these propositions are admitted by the court below and neither is denied by the appellee. The remedy adopted by the legislature is attacked by the appellee and denounced by the court. That it has a relation to the purposes of the act is not denied, but it is complained that it is too drastic and that the public health could be adequately protected by a milder method. The court below does not even suggest a milder method by which the public could be secured against fraud and deceit and the appellee has failed to propose substitute. Had the court have recognized that the protection of the public against fraud was as proper a purpose for the regulation of the use of shoddy as the protection of the public health, it would undoubtedly have realized that its criticism of the act concerned the legislative question of remedies rather than the judicial question of the mere existence of a relation between the subject matter and the purpose. We deny that the due process clause is violated.

If, therefore, this act does not deprive any person of due process of law, it cannot deny to any person the

equal protection of the laws unless the classification of articles of bedding is arbitrary and discriminatory and omits some article that beyond all reasonable doubt, should have been included. All persons covered by the statute who are similarly situated are treated alike under like circumstances and conditions. Consequently, the only test for judicial determination is that of classification. If the classification prescribed rests upon some difference which bears a reasonable relation to the act, it is a reasonable classification. It may be an unwise classification, which we deny in this case, yet if a reasonable relation to the act exists it cannot violate the equal protection of the laws clause of the 14th Amendment.

We therefore submit that the Pennsylvania Act of June 14, 1923, is a proper exercise of the police power of the state and that the judgment of the United States District Court for the Western District of Pennsylvania should be reversed and the bill of the appellee should be dismissed.

GEORGE W. WOODRUFF,
Attorney General.

JAMES O. CAMPBELL,
Deputy Attorney General.

E. LOWRY HUMES,

*Attorneys for Appellant.*

## Exhibit "A"

No. 314.

AN ACT

Relating to mattresses, pillows, bolsters, feather beds, comfortables, cushions, and upholstered furniture; regulating the making, remaking, renovating, sterilizing, disinfecting, sale, leasing, delivering, and consigning thereof, and the possession thereof with intent to sell, lease, deliver, or consign.

Section 1. Be it enacted, &c., That the word "Mattress" shall mean any quilted pad, mattress, mattress pad mattress protector, bunk quilt, or box spring, stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, kapok, or other soft material, to be used on a couch or other bed for sleeping or reclining purposes.

The words "pillow," "bolster," or "feather bed" shall mean any bag, case, or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used on a bed, couch, divan, sofa, lounge, or other article of upholstered furniture for sleeping or reclining purposes.

The word "comfortable" shall mean any cover, quilt, or quilted article made of cotton or other textile material, and stuffed or filled with fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used for sitting, resting, or reclining purposes.

The word "cushion" shall mean any bag or case made of leather, cotton, or other textile materials, and stuffed or filled with excelsior, hay, grass, corn husks,

tow, moss, fibre, cotton, wool, hair, feathers, feather down, kapok, or other soft material, to be used on a hammock, chair, couch, divan, sofa, lounge, or other article of furniture for reclining, resting, or sleeping purposes.

The words "upholstered furniture" shall mean any article of furniture stuffed or filled with excelsior, straw, hay, grass, corn husks, tow, moss, fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material, to be used for sitting, resting, or reclining purposes.

The word "new," as used in this act, shall mean any material or article which has not been previously manufactured or used for any purpose.

The word "secondhand" shall mean any material or article of which prior use has been made.

The word "shoddy" shall mean any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up.

The word "person," as used herein, shall include persons, corporations copartnerships, and associations.

Words used in the singular number shall include the plural; and the plural, the singular.

Section 2. No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture: (a) Any material known as "shoddy," or any fabric or material from which "shoddy" is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry; (c) any new or secondhand feathers,

unless such new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry.

Section 3. Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster, comfortable, cushion, or article of upholstered furniture in which secondhand material is used, or in the making of any new or secondhand feather or down filled article, or engaged in sterilizing and disinfecting any material, feathers, or article coming under the provisions of this act, shall submit to the Commissioner of Labor and Industry for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of secondhand material, feathers, and secondhand articles herein enumerated.

Upon the approval of such process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the commissioner. Such permit shall expire one year from date of approval. Every person to whom a permit has been issued, shall keep such permit conspicuously posted in his office or place of business. Refusal to display such permit in accordance with this act shall be sufficient reason to revoke and forfeit the permit.

Nothing in this act shall prevent any person engaged in the making, remaking, renovating or sale of any article herein described, which requires sterilizing and disinfecting under the provisions hereof, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, providing the number of the permit shall appear in the statement on the tag attached to the article.

Section 4. All places where any mattress, pillow, bolster, bed, comfortable, cushion, or article of uphol-

stered furniture is made, remade, or renovated, or where materials for the herein named articles are prepared, or establishment where said articles are offered for sale, or are in possession of any person with intent to sell, deliver, or consign them, or establishment where sterilizing and disinfecting is performed, shall be subject to inspection by the Department of Labor and Industry to ascertain whether the materials and the finished articles herein enumerated conform to the requirements of this act.

Section 5. No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in his possession with intent to sell, lease, deliver, or consign in sale or lease, (a) any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, made, remade, or renovated in violation of this act; (b) any secondhand mattress, pillow, bolster, feather bed, or comfortable, unless, since last used, it has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry.

Section 6. Each and every mattress or article covered by this act, other than a feather or down filled pillow, bolster, bed comfortable, cushion, or any secondhand article of upholstered furniture, shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, (a) a statement showing whether the materials used in filling said mattress or article are wholly new or secondhand or partly secondhand; (b) the name and address of maker and vendor; (c) the word secondhand upon any article of which prior use has been made; (d) the number of the permit issued for sterilizing and disinfecting.

Each and every pillow or other article covered by this act, in which feathers or down are used, shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, (a) statement that the feathers or down used in filling have been sterilized and disinfected in accordance with this act; (b) the number of the permit issued for sterilizing and disinfecting the feathers or down; (c) the name and address of maker and vendor; (d) the word secondhand upon a feather or down filled article of which prior use has been made; (e) the number of permit issued for sterilizing and disinfecting.

Each and every article of upholstered furniture of which prior use has been made shall bear securely attached thereto and visible on the outside covering a tag, to be procured from the Department of Labor and Industry, upon which shall be plainly and indelibly stamped or printed, in English, the word secondhand, together with the name and address of the vendor.

No additional information shall be contained in said statements.

Section 7. The statement on the tag required by this act to be attached to any article covered by this act shall be not less than three by four and a half inches in size.

The tag, with the replica of the seal of this Commonwealth printed thereon, shall be in the following form:

OFFICIAL STATEMENT.

Materials used in filling.....

Made by .....

Vendor .....

Address .....

This article is made in compliance with the act of Assembly of Pennsylvania, approved.....

.....

Permit number .....

It shall be unlawful for any person to imitate, counterfeit, sell, or have in his possession any imitated or counterfeited tag required under the provisions of this act.

It shall be unlawful to use, exclusively, in the said statement concerning any mattress, pillow, bolster, comfortable, cushion, or article of upholstered furnitrue the word "Felt," or words of like import, if any other than garnetted materials are used in filling, or the words "Curled Hair," or words of like import, if other than curled hair is used in filling.

It shall be unlawful to stamp or print on a tag any misleading term or designation, or to remove, deface, alter, or in any manner attempt the same, or cause to be removed, defaced, or altered, any statement on a tag placed upon any article included in the provisions of this act.

Section 8. The Commissioner of Labor and Industry is hereby authorized to contract for the printing of the tags required by the provisions of this act. The commissioner shall, upon the application to him by any person, furnish tags, with the name and address printed thereon of the maker, remaker, or renovator of any article covered by this act, in quantities of not less than one thousand tags, for which the applicant shall pay ten dollars for each one thousand tags.

All fees collected under the provisions of this act

shall be paid to the Commissioner of Labor and Industry, and, when so collected and paid, shall thereafter be by the Commissioner of Labor and Industry paid into the State Treasury.

The State Treasurer shall establish a separate fund, to be known as the Bedding and Upholstery Fund, into which all moneys collected under the provisions of this act shall be paid, and from which all expenditures necessary in carrying into effect the provisions of this act shall be paid.

All moneys in the Bedding and Upholstery Fund, from time to time, are hereby specifically appropriated to the Department of Labor and Industry for the purpose of carrying into effect the provisions of this act, and for the payment of salaries and expenses of inspectors, employes, and for research, or any other necessary expenses of the Department of Labor and Industry connected with the enforcement of this act.

The money in the Bedding and Upholstery Fund shall be paid to the use of the Department of Labor and Industry, in advance, from time to time, as the same is required, upon requisition by the Commissioner of Labor and Industry.

The Auditor General shall, upon requisition, from time to time, of the Commissioner of Labor and Industry and the proper accounting for moneys already advanced from the fund, draw his warrant upon the State Treasurer for the amount specified in such requisition not exceeding, however, the amount in such fund available for the purposes herein specified at the time such requisition is made.

Section 9. The Department of Labor and Industry, through its officers and employes, is hereby charged with the administration and enforcement of this act.

Section 10. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof in a summary action before a magistrate, alderman, or justice of the peace, shall be sentenced to pay a fine of not less than ten dollars and not more than fifty dollars for each offense, and, in default of the payment of such fine, to undergo an imprisonment of not less than ten days for each separate offense: Provided, That the total term of imprisonment at one time for additional offenses shall not exceed six months.

Each mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture, made, remade, or renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver, or consign, contrary to the provisions hereof, shall constitute a separate offense.

Each imitated or counterfeited tag made, used, sold, offered for sale, delivered, or consigned, contrary to the provisions hereof, shall constitute a separate offense.

The commissioner may revoke any permit issued under the provisions of this act if the person to whom the permit was issued has violated any provisions of this act or the rules or regulations established thereunder.

Section 11. It is the intention of the General Assembly that, if this act cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding unconstitutional any part or parts hereof, the remaining provisions of the act shall be given full force and effect as completely as if the part or parts held unconstitutional had not been included herein.

Section 12. The following acts, which this act is to

replace: Act number 90, approved May first, one thousand nine hundred and thirteen (Pamphlet Laws, one hundred and thirty-four), entitled "An act defining mattresses; regulating the making, remaking, and sale thereof; prohibiting the use of unsanitary and unhealthy materials therein; requiring that the materials used shall be accurately described, and prescribing the manner in which mattresses shall be labeled; providing for the enforcement of the provisions of this act; making certain acts criminal, and punishing the same; imposing certain duties upon the Commissioner of Health and the Chief Factory Inspector; and repealing legislation inconsistent with this act," which was amended by act, two hundred and nineteen, approved May fourteenth, one thousand nine hundred and fifteen (Pamphlet Laws, five hundred and ten), and all other acts or parts of acts inconsistent herewith, or replaced hereby, are repealed.

Section 13. This act shall take effect January first, one thousand nine hundred and twenty-four.

APPROVED—The 14th day of June, A. D. 1923.

GIFFORD PINCHOT.

The foregoing is a true and correct copy of the Act of the General Assembly No. 314.

CLYDE L. KING,

*Secretary of the Commonwealth.*

## Exhibit "B"

### Memoranda of Legislative Acts Prohibiting the Use of Shoddy

ALABAMA

The Alabama State, approved August 9th, 1915, provides:

"Section 8.—No person within this State, shall use, either in whole or in part, in the manufacture of mattresses or comforts, any cotton, or other materials, which has been used for any purpose whatever."

INDIANA

The Indiana Act of 1917 provides, inter alia, as follows:

"Section 1. No person, firm or corporation, by himself or his agents, servants or employees, shall employ or use in the making, re-making, or renovating of any mattress: (a) Any material of any kind that has been used in or formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease, or for or about any person having any infectious or contagious disease; (b) Any material known as 'shoddy', made in whole or in part from old or worn clothing, carpets or other fabric, or material previously used, or any other fabric or material from which 'shoddy' is constructed. * * *"

IOWA

The Iowa Statute of April 16th, 1923, provides:

"Section 2. It shall be unlawful for any manufacturer or his agent to sell, offer or consign for sale, or have in his possession with intent to sell, offer or con-

sign for sale, any mattress or comfort as herein defined, containing any infectious, insanitary or unhealthful material, or any other material previously used or not entirely new, sterilized feathers excepted, and unless the same be labelled as follows, to wit: to each of said articles there shall be attached upon the outside thereof, a cloth, or cloth-lined label not less than two by three inches in size, upon which shall be legibly written or printed, in the English language, in letters not less than one-eighth of an inch in height, a description of the materials used in the filling, with the name and address of the maker of such mattress or comfort. The sewing of one edge of said label securely to said article shall be sufficient.

If all of the material used in making said articles shall not have been previously used, and be new, the words 'Manufactured of New Material' shall appear upon said label."

KENTUCKY

The Kentucky Statute of April, 1920, provides:

"Section 2. Part (A). No person or corporation, by himself or by his agents, servants or employees, shall employ or use in the making, remaking or renovating of any mattress, any material of any kind that has been used in or has formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease, or for or about any person having an infectious or contagious disease; any material, not otherwise prohibited in this act, of which prior use has been made; unless any and all of said material has been thoroughly sterilized, and disinfected by a reasonable process, approved by the board of health of the city or town where said mattress is made, remade, or renovated.

Part (B). The use of shoddy made from second hand materials, jute, old comforts, pads or mattresses in the manufacture of new mattresses to be offered for sale as such is here prohibited."

### LOUISIANA

The Louisiana Act, approved July 10th, 1918, provides:

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, that no persons, firms or corporation shall use, either in whole or in part, in the making of any mattresses, quilts or bed comforters any second hand cotton, cotton felt, hair, wool, shoddy, feathers, excelsior or moss or any other soft material, which has been made second hand by use about the person; nor shall any person, firm or corporation sell or offer to expose for sale, or be in the possession of with intent to sell, or deliver any mattress, quilt, pillows or bed comforters in which has been used in the making, either in whole or in part, any second hand cotton, cotton felt, hair, wool, shoddy, feathers, excelsior or moss or any other soft material, which has been made second hand by a previous use on or about the person."

### MARYLAND

Section "B" of Section 51 of the Code of Public General Laws of Maryland, approved April 9th, 192[illegible], is as follows:

"(B). No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed or comfortable (a) Any material known as 'shoddy,' or any fabric or material from which 'shoddy' is constructed; (b) any second hand material, unless, since last used, such second hand material has

been thoroughly sterilized and disinfected by a reasonable process approved by the Director of Health; (c) any new or second hand feathers, unless such new or second hand feathers have been sterilized and disinfected by a reasonable process approved by the Director of Health."

MISSOURI

Section 2 of the Act of the State of Missouri, approved May 26th, 1919, reads as follows:

"Section 2. No person or corporation, by himself or his agents, servants, or employees, shall employ or use in the making, remaking or renovating of any mattress:

(a) Any material of any kind that has been used in, or has formed a part of, any mattress used for or about any person having any infectious or contagious disease:

(b) Any material known as "shoddy,' and made in whole or in part from old or worn clothing, carpets or other fabrics, or material previously used, or any other fabric, or material from which shoddy is constructed."

MONTANA

The Statute of the State of Montana which became effective June 1st, 1915, provides as follows:

"Section 1. No person, firm or corporation shall, within the State, sell, Offer for Sale or Manufacture, what is commonly known as shoddy, or sell, offer for sale or manufacture mattresses, pillows, couches, couch pads or lounges containing shoddy in whole or in part.

"Section 2. The term 'shoddy' as used in this Act, shall include all materials made or manufactured of rags, wearing apparel, clothing, rags, carpets or blankets."

NORTH CAROLINA

Section 1 of the North Carolina Act, passed March 29th, 1923, defines bedding as meaning "any mattress, upholstered spring, comforter, pad, cushion or pillow designed and made for use in sleeping or reclining, except where the filling thereof consists exclusively of sterilized feathers", and Section 2 of that Act is as follows:

"Section 2. No person shall, in the making or remaking of any article of bedding as herein defined, use any material of any kind that has been used by or about any person having an infectious or contagious disease or has formed a part of any article of bedding which has been so used, or use in said manufacture any material known as 'shoddy' and consisting in whole or part, of old or worn clothing, carpets or other fabric, or material previously used, or use in said manufacture any other fabric or material from which shoddy is constructed."

NEW JERSEY

The New Jersey Act, approved March 4th, 1918, after defining in Section 1 the term "mattress" as meaning "any quilted pad, mattress, mattress pad, bunk quilt, or cushion stuffed or filled with wool, hair, or other soft material, except feathers, to be used on a couch or other bed for sleeping or reclining purposes." provides in Section 2 as follows:

"2. No person or corporation, by himself or his agents, servants, or employees, shall employ or use in the making, remaking or renovating of any mattress:

(a) Any material of any kind that has been used in, or has formed a part of, any mattress used for or about any person having any infectious or contagious disease;

(b) Any material known as 'shoddy,' and made in whole or in part from old or worn clothing, carpets or other fabric, or material previously used, or any other fabric or material from which shoddy is constructed.

(c) Any material, not otherwise prohibited by this act, of which prior use has been made, unless the said material has been thoroughly sterilized and disinfected by a reasonable process approved by the Department of Health of this State."

TENNESSEE

The Act of the State of Tennessee, approved March 26th, 1917, Section 5, provides:

"That the sale of any mattress used in any home, sanitarium, hospital or other place where there has been a contagious disease, is hereby expressly prohibited; and that said mattress or material therein contained shall be disposed of as directed by the inspector authorized to inspect mattresses under this act. And in no case shall the material be used in the reconstruction or making of mattresses for purpose of home, private or public use in any like capacity as may be intended in the manufacture of new mattresses.

The use of shoddy made from second hand materials, jute, old comforts, quilts, pads or mattresses or floor sweepings from a cotton mill, compress or railroad platforms in the manufacture of new mattresses to be offered for sale as such, is hereby expressly prohibited."

UTAH

The Utah Statute, passed March 12th, 1923, which defines bedding as meaning "any mattress, mattress pad, bed comforter, quilted pad, upholstered spring or pil-

low, except where the filling thereof consists exclusively of sterilized feathers." provides as follows:

"Section 6. No person, firm or corporation, by himself or by his agents, servants, or employees, shall sell or offer to sell, deliver, or consign or have in his or their possession with intent to sell, deliver or consign any mattress made of material known as "shoddy' made in whole or in part from old or worn clothing, carpets, jute, bags or burlap or other fabric or material from which 'shoddy' is constructed."

CITY OF SPOKANE

The municipal ordinance of the City of Spokane, Washington, enacted December 31st, 1923, Section 6, provides:

"Section 6. Waste and Shoddy Not to Be Used—Waste and shoddy shall not be used in the manufacture, remaking or renovation of mattresses or pillows."

(1-2)

FILED
NOV 30 1925
WM. R. STANSBURY
CLERK

IN THE

# Supreme Court of the United States

**NO. 510 OCTOBER TERM, 1925.**

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D. E. WEAVER, Chief of the Bureau of Inspection, in Pittsburgh, of the DEPARTMENT OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, Appellant,

vs.

THE PALMER BROTHERS COMPANY, Appellee.

## BRIEF FOR APPELLEE.

Appeal From the District Court of the United States for the Western District of Pennsylvania.

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Pittsburgh, Pa.,

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IN THE

# Supreme Court of the United States

**NO. 510 OCTOBER TERM, 1925.**

D. E. WEAVER, Chief of the Bureau of Inspection, in Pittsburgh, of the DEPARTMENT OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, Appellant,

vs.

THE PALMER BROTHERS COMPANY, Appellee.

Appeal From the District Court of the United States for the Western District of Pennsylvania.

## Argument.

### I. INTRODUCTION.

The Appellee in this case filed a bill in equity in the District Court of the United States for the Western District of Pennsylvania, asking the Court to enjoin the enforcement of a statute of Pennsylvania (1923, P. L. 802), relating to mattresses, comfortables, etc., upon the ground that it is an unreasonable and arbitrary exercise of the police power violating both the due process and the equal protection clauses of

the Fourteenth Amendment of the Federal Constitution.

The appellee is a manufacturer of bed comfortables in Connecticut, and in making them uses a well-known material which is known as shoddy. The Pennsylvania statute, in Section 1, defines shoddy as follows: "The word 'shoddy' shall mean any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up."

The statute absolutely prohibits the use of shoddy in the manufacture of mattresses, comfortables, etc. It permits, however, in such manufacture, the use of secondhand material, if sterilized.

Section 2, which contains the prohibition and regulation, is as follows: "No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable cushion, or article of upholstered furniture: (a) Any material known as 'shoddy,' or any fabric or material from which 'shoddy' is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry; * * *."

The complainant based its bill upon the propositions, among others, that if shoddy may be sterilized so that it is no more harmful than the secondhand material referred to in Clause (b) of Section 2 of the Act, then its prohibition is unreasonable and arbitrary, and also that, since the Act prohibits the use of

shoddy in mattresses, comfortables, etc., but fails to prohibit its use in blankets, underclothing and garments of all kinds, it contains an unconstitutional discrimination.

The Act is an unreasonable and arbitrary exercise of the police power in these respects:

(a) It prohibits entirely the use of shoddy, a recognized commercial commodity, whether made from new or secondhand materials, in the making of mattresses, comfortables, etc.

(b) It prohibits all shoddy but permits the use of secondhand materials after sterilization, although it is acknowledged that all shoddy, new or old, may be made harmless by sterilization.

(c) It prohibits shoddy in the making of comfortables, but does not prohibit it in the making of blankets, underclothing or in many other articles of commerce, of equally intimate daily use by people.

The appellee company, for fifty years, has manufactured comfortables of all grades, filled with cotton, wool, down, shoddy (new and secondhand) and other soft materials, garnetted or lapped into thin sheets which are covered with cotton or silk covers. ~~Until recent years,~~ It has used as filling material in a considerable portion of the comfortables produced by it, a material used in trade for many years and known as "shoddy." This is made by picking apart and shredding secondhand garments and other fabrics, and then lapping them into a bat or sheet, so as to be suitable to place in the new cloth covers of a comfortable. This material is what is known in the trade as "shoddy" (Record, p. 79), and the comfortables

made from it are labeled "Filled with secondhand shoddy." In recent years, a large source of filling material has become available in the form of "clippings" or pieces of new cloth, which are obtained from the cutting tables of garment factories, and which have never come into contact with the hands or persons of anybody, except in the processes of manufacture. The filling made from such new materials possesses the appearance of shoddy, and falls within the definition of shoddy in the statute. But, in order to distinguish properly such filling from the secondhand stock covered by the traditional definition of shoddy, the appellees have marketed the comfortables filled with it under the designation of "new dark cotton, carded," which is a trade name (Record, p. 58), and have marketed the comfortables made of old shoddy under the designation "filled with secondhand shoddy material."

The 1920 census shows that millions of pounds of shoddy are used in various industries in the United States. Of the three million comfortables produced annually by the appellee, approximately three-fourths of a million are filled with material classified under the Act as shoddy. In the United States the appellee company constitutes practically the whole industry in comfortables filled with secondhand shoddy (Record, pp. 78, 88). In Pennsylvania, in 1923, the appellee's business totaled $558,773.60, of which $188,984.60 was the price paid to it for comfortables filled with shoddy as defined by the Act. Expressed in dozens, the appellee distributed in Pennsylvania, in 1923, approximately 8,000 dozens of comfortables filled with shoddy, as defined by the Act, of which 3,000 dozens were filled

with secondhand shoddy and 5,000 dozens filled with shoddy made from new materials. There is not enough wool produced in the world to furnish a constant supply for new fabric and there is a commercial necessity for the use of reclaimed cotton and wool fibre.

## II. WHAT THE COURT DECIDED AND THE QUESTIONS INVOLVED.

Upon the final hearing in this case the Court granted the injunction asked for by the appellee. We do not believe that the appellant has stated quite clearly what the questions are in this case.

The Court decided this case upon two points in favor of the plaintiff. The first was that, in view of the uncontradicted testimony in the case that sterilization removed all danger from shoddy, the prohibition of shoddy in the manufacture of comfortables was unconstitutional; and the second, that to prohibit the use of shoddy in the manufacture of mattresses, pillows and comfortables and permit its use in blankets, clothing and many other kinds of manufactured goods was also unconstitutional.

Both of these points fall well within the provision of the Fourteenth Amendment, which provides "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

We see no purpose in quoting from the Court's opinion at length. His conclusions and his reasons are written into it in half a dozen different ways.

The assignments of error limit the discussion in this case to these two points. There cannot be any other question.

## III. THE PURPOSE OF THE ACT AS SUGGESTED BY APPELLANT.

### (a) Protecting Public Health:—

Under the above heading it is stated: "The Court below, in its Opinion, recognizes the purpose of the Act as proper and that the subject matter thereof bears a reasonable relation to the purpose of protecting the public health." We think the decision of the Court in this respect is right, as shown by the quotation in the appellant's paper book. If there was a dispute, with testimony by witnesses as to whether or not the use of shoddy was a menace to public health, that was not a judicial question. But what the Court said is, "There is a dispute as to whether shoddy as now used," that is, unsterilized. There was no dispute that shoddy sterilized was not a menace. But a reasonable relation between the purpose and the subject matter is not enough to sustain a statute, passed for the purpose of protecing public health. There must not be an unreasonable, arbitrary or discriminatory exercise of the authority held by the legislature.

(b) FRAUD AND DECEPTION:—

The appellant, we think, makes too much of an incident of the trial:— A comfortable was offered as an exhibit, which we will assume had been made by the plaintiff company, upon which the label read: "New Dark Cotton Carded". This was a comfortable filled with shoddy, within the meaning of the Pennsylvania law, but it was a new shoddy; that is, shoddy made from materials that had not been subjected to human use,—made from clippings. This sustained the word "new". It was dark cotton; that is, if there was any other material in it, it was wool, which was more expensive than cotton. To label the comfortable "New Dark Cotton Carded" was only a mis-statement in that it did not indicate that a more expensive material was contained in it than cotton. "Carded" indicated that it was a shoddy—cotton torn up. Nobody pretended upon the trial of the case that this label had been put on in compliance with the Pennsylvania statute and for the purpose of evading that statute, because the comfortable had been made and the label affixed, as near as could be learned, prior to the passage of the Pennsylvania statute, or at least prior to its effective date, which was January 1st, 1924; and this comfortable was offered as an exhibit at the preliminary hearing of that case, which was held in February of 1924.

Under this heading also the defendant makes use of the language: "It being undisputed that the Pennsylvania Legislature, in enacting this statute, exercised the police power for proper purposes and over a

subject matter which bears a reasonable relation to those purposes, the due process clause of the 14th Amendment is not violated." Even if the exercise of the police power was for a proper purpose, even if the subject matter of this statute bears a reasonable relation to the purposes, nevertheless, the conclusion of the appellant is wrong, that the due process clause of the 14th Amendment is not violated. This is not a correct statement. There must be something more than a reasonable relation between the purpose of the statute and its subject matter; there must be a reasonable and equable exercise of the police power.

There is nothing in the Act nor in the testimony that would indicate that the Legislature, in the prohibition of shoddy, was attempting to prevent fraud and deception. It would seem that if anything could be seen it would be that a certain material was shoddy, as against any other kind of filling that might be used. But at any rate, the provisions of the statute as to labels seem to be effective as preventing any fraud and deception, and these provisions the Court has permitted to stand.

In his opinion, the Court says:

> "* * * It is just as difficult now to inspect a comfortable for the purpose of ascertaining whether shoddy has been used as filler—as it would be to inspect in order to ascertain whether sterilized shoddy were used as filler. The same complaint might also apply to the provision of the statute which permits the use of secondhand material other than shoddy as filler for mattresses and comfortables, provided they have been prop-

> erly sterilized. It is unreasonable to say: 'We will permit sterilized secondhand materials, but not sterilized shoddy, when both may be inspected with equal facility when bound up in a mattress or comfortable.'"

It seems to us that this needs no further discussion. Whether or not any material has been sterilized is not apparent. To apply the argument to shoddy alone means nothing.

## IV. HISTORY OF THE LEGISLATION.

The history of the legislation, we think, is of little value in determining our case. It is well known that if a movement of some sort is started, resulting in the passage of a statute by one of the State legislatures, in a short time it is followed by other States, apparently without very much consideration. Thus it is that, starting in 1909, this bedding legislation has spread in sixteen years to twenty-eight States. The futility of all this legislation is shown by the testimony of Dr. Winslow (Record, p. 105 *et seq.*).

The analysis of these statutes which is given by the appellant's counsel is not the same as ours.

We find that—

Twenty-eight of the States have legislation relating to bedding or mattresses. An examination of these statutes shows that the Pennsylvania statute and the Maryland statute, which was copied after it, are the only ones absolutely prohibiting all shoddy. In five of the twenty-eight States the statutes clearly do not apply to comfortables, and in five other States

it is very doubtful whether the statutes apply to comfortables, leaving eighteen States in which there are regulations on the subject of comfortables.

Most of the bedding legislation contains prohibitory provisions against the use as a bedding material of old mattresses, pillows, and so forth, which have been used by hospitals or by persons having infectious or contagious diseases.

Sixteen States absolutely prohibit the use of such materials in the manufacture of bedding, and four States prohibit their use unless sterilized.

Twenty-three States require the tagging of bedding with labels, which, in most of these States, must describe the material used in manufacture, and indicate whether new or secondhand. In a few of the statutes, it clearly appears that the purpose of the tagging provisions is to prevent fraud upon purchasers, but in most of the statutes the purpose of the tagging provisions is not indicated. In nine of the twenty-eight States inspection of bedding factories is authorized.

Of the twenty-eight bedding statutes, eleven do not apply to shoddy. In the seventeen statutes which mention shoddy by name, or cover it by definition, five permit its use if sterilized, and one permits its use if properly labelled. In these six States the definition applies only to old shoddy, or that which is made from old or secondhand materials which have had previous use.

In nine of the remaining eleven States limiting the use of shoddy, the statutory definition clearly applies only to old shoddy.

It is only in Pennsylvania and in Maryland that the law is so broad as to cover filling made by grinding up perfectly new and unused fabric. The Maryland statute was passed in 1924, modelled after the Pennsylvania statute.

None of this legislation in Pennsylvania related to comfortable until the Act of 1923. Upon page 146 of the Record appears this stipulation:

> "Stipulation re Act of 1913.
>
> It is agreed by and between counsel that the Act of 1913, and the Amendment of 1915, did not apply to comforters; that comforters were first covered by Pennsylvania legislation by the Act of 1923."

There has been no judicial interpretation of any of these statutes except in the case of *People vs. Weiner,* 271 Ill. 74; L. R. A. 1916 C. 775, which we cite below in our brief.

Historically, we are reminded of the Pennsylvania oleomargarine legislation, beginning in 1878. In 1885 an Act was passed with drastic provisions as to the prohibition of oleomargarine. These Acts passed through this Court in *Powell vs. Commonwealth,* 127 U. S. 678, 8 Sup. Ct. 992, and *Schollenberger vs. Pennsylvania,* 171 U. S. 1. Now the tumult about oleomargarine has ceased and it is recognized as a

useful and wholesome commodity. All that is required is that the vendor of it shall obtain a license, with the exercise of a little care as to the provisions of the statute relating to coloring, etc.

## V. EVIDENCE SUBMITTED TO THE COURT.

The testimony in this case makes clear the following uncontroverted facts:

The world's supply of new wool is insufficient to clothe the people of the temperate zones and to meet other demands. This scarcity and the public demand for cheaper substitutes require the commercial use of reclaimed wool and cotton fibre (Record, p. 96). In the United States, as shown by the 1920 census, many millions of pounds of reclaimed fabric, part secondhand and part new, are picked apart and shredded in such manner that the original fibres may be rewoven into fabrics or made into sheets or bats, to be used as a filling material for bedding, cushions, stuffed furniture, etc. Mr. Dean, of the American Woolen Company, testified (Record, pp. 93, 94) that practically all the woolen cloth woven in the United States contained some shoddy. Shoddy is used in the manufacture of clothing, blankets (Record, p. 94), underwear (Record, p. 102), hosiery, gloves, sweaters, and all kinds of garments. Mr. Dean testified (Record, p. 93 *et seq.*) that woolen rags were used in the making of shoddy for ultimate use in textile materials without being cleansed (Record, p. 94), sterilized or carbonized in any way. Shoddy is also used for making saddler's felt, which is used in surgery, underneath a cast and next to

the body (Dr. Sherman, Record, p. 77). Shoddy is also used in making absorbent cotton and surgical bandages by the largest producers in the country of these commodities (Record, pp. 101-102). Mr. Moore testified that shoddy was sold on the market as a common article of commerce in the form of shoddy bats or sheets, the only use of which is for the making of comfortables or quilts for domestic use by the housewife. These bats are not prohibited by the Act. It was proved in evidence that some of the higher grades of shoddy are made from materials costing as high as $1.38 per pound, which are finer and better than many classes of new cotton or wool. Mr. Howard Palmer offered in evidence a baby comfortable from the plaintiff's mills, filled with a beautiful white fleecy filling made from French underwear clippings, garnetted into shoddy that, to the eye at least, seemed to be as pure and clean as could be desired. Under the Act, this filling made from new materials of the finest grade of wool is classed as shoddy and is prohibited. Coming to the comfortable filled with shoddy made from so-called secondhand material, it appears in the testimony, particularly that of Mr. Kahl (Record, p. 67 *et seq.*) of Arbuthnot-Stephenson Company, a large wholesale drygoods company, that the lowest priced comfortables on the market are those made of secondhand shoddy; that they are desired by many classes of people of moderate means and are dealt in extensively; that nothing in the line of comfortables approaches them in cheapness of price and that nothing of the bedding line can be substituted to give as much warmth as these for the same price. In point of price, the nearest comfortable filled with

new material costs more than twice as much to the consumer (Record, p. 67). No substitute of equal warmth, cheapness and utility can be found to take the place of old shoddy. It was suggested by counsel for the Commonwealth in examination of witnesses that cotton linters or the short cotton fibre cut from the cotton seed after ginning would be an effective substitute for shodding as filling. The testimony of Mr. Howard Palmer shows (Record, p. 51) that on account of its lack of cohesion and dustiness it cannot be used as a filling material. It is used, however, as a filling for mattresses, but it has to be blown in (Record, p. 104).

It is undenied and is a well recognized fact that any fabric from which shoddy may be made, may be sterilized by processes which are comparatively cheap to operate. The testimony of Dr. Sherman (Record, p. 75 *et seq.*), Mr. Stewart (Record, p. 84), Mr. McCarthy (Record, p. 86), and Mr. Dohr, (Record, p. 86), shows that steam sterilizers have been used for years by the Carnegie Steel Company, the Municipal Hospital of Pittsburgh, the St. Francis Hospital and the Tuberculosis League, for the purpose of sterilizing mattresses, pillows and bedding. In the case of the hospitals, it is shown that bedding used by persons afflicted with the most virulent of infectious and contagious diseases is sterilized and used over and over again until worn out. It is not questioned that the sterilization renders the bedding safe for use by subsequent patients. The appellee sterilizes, in machines of the same make as those used by the above named hospitals, all the materials which it makes into second-

hand shoddy. The effectiveness of their sterilization is proved by the testimony of Dr. Newlands (Record, p. 70), based on a scientific bacteriological test. Sterilization costs the appellee one-eighth of a cent per pound of material sterilized, which would amount to about one cent for each comfortable manufactured, a negligible figure in comparison with the price of the finished article.

The very interesting testimony of Dr. Winslow of Yale University (Record, p. 105 *et seq.*), which was uncontradicted, shows that the popular impressions as to the spread of infection are entirely erroneous. The bacteria of disease are transmitted almost entirely by immediate contact with an infected human being, or by coming within the range of such a person's cough, or by actually handling things used by such a person within a short period of time after exposure to the infected person. Bacteria do not thrive outside of a human or animal organism and when separated from their natural habitat die off very rapidly. Within a few days after a garment, for example, is removed from an infected person, practically all danger of the transmission of disease from it is gone, on account of the death of any bacteria which may be in it. Disease germs die out very rapidly outside the body (Record, p. 107). Bacteria cannot move about. Lice and other vermin which do move about require contact with living organisms in order to survive, and they cannot live long in an inanimate object such as an old garment. The chances of the survival of bacteria or lice in the materials which are made into shoddy after the several weeks required as a minimum for the process of manufacture into shoddy, storage and shipping are none.

Even if they could survive for this period of time, they would not be likely to survive the shoddying process and would certainly not survive sterilization. There could be no more danger from shoddy than from secondhand materials. The danger of the spread of communicable disease from shoddy or anything else depends on its exposure to an infected human being within a period of a few weeks (Record, p. 106). Dr. Winslow was of the professional opinion that in the interest of public health it was proper to regulate the *use* of bedding material, but not the material itself (Record, p. 109). He cited a number of eminent bacteriologists who agreed with him in his views expressed on the stand, and testified that there was no modern disagreement on the subject among men of science (Record, p. 147 *et seq.*).

Dr. Newlands testified (Record, p. 72 *et seq.*) that with respect to inspection, the presence of bacteria, harmful or beneficent, in shoddy, secondhand material, or in anything else, could not be determined by unaided sight, but could only be determined by laboratory inspection. Dr. Newlands testified that the inspection of comfortables to determine the presence of dangerous bacteria would be no more difficult than the ordinary health department inspection of milk. It is as easy to determine the presence of bacteria in shoddy as in secondhand material.

The defendant offered no testimony contradicting the foregoing. Nothing was offered to prove any danger to health from the use of shoddy. The defendant showed at most an aesthetic displeasure at the thought of using "shoddy."

## VI. THE PROTECTION AFFORDED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The appellee believes that the statute before the Court violates the Fourteenth Amendment of the Constitution of the United States, which reads in part as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The statute works a deprivation of liberty and property. If this interference is reasonable and fair, the statute may be sustained as a proper exercise of the police power. If the interference is an unreasonable and arbitrary exercise of the police power, or if it has no substantial relation to the public health, the Act violates the Fourteenth Amendment and is unconstitutional. *Mugler vs. Kansas,* 123 U. S. 523; 31 L. ed. 210. In this case the Court said:

> "If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

The Fourteenth Amendment protects persons in the pursuit of lawful occupations.

> "A State may not under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations, or impose unreasonable and unnecessary restrictions, upon them."
>
> *Jay Burns Baking Company et al. vs. Charles W. Bryan et al.,* April 14, 1924, 68 L. ed. 459.

> "The term (liberty) is deemed to embrace the right of the citizen to be free in the engagement of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."
>
> *Allgeyer vs. Louisiana,* 165 U. S. 578.

What rule shall guide the Court in determining whether a statute is an arbitrary and unreasonable exercise of the police power? The point is ruled and the principle seems to be that where there is any doubt as to whether or not a thing prohibited is obnoxious, poisonous or harmful, the determination by the Legislature is conclusive; but if there is no doubt; that is, if the testimony in the case shows that the thing prohibited is not harmful, or that it may be rendered

harmless by proper regulation, then the Court may say that its prohibition is unreasonable and arbitrary.

In *Price vs. Illinois,* 238 U. S. 466, 59 L. ed. 1400, the Court said:

> "The contention of the plaintiff in error could be granted only if it appeared that by a concensus of opinion the preservative was unquestionably harmless with respect to its contemplated uses; that is, that it indubitably must be classed as a wholesome article of commerce so innocuous in its designed use and so unrelated in any way to any possible danger to the public health that the enactment must be considered as a merely arbitrary interference with the property and liberty of the citizen. It is plainly not enough that the subject should be regarded as debatable. If it be debatable, the legislature is entitled to its own judgment, and that judgment is not to be superseded by the verdict of a jury upon the issue which the legislature has decided."

In *Meyer vs. Nebraska,* 262 U. S. 390, 67 L. ed. 1042, it is said:

> "Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the Courts."

The last clause of the Fourteenth Amendment, which provides that no State shall deny to any person within its jurisdiction the equal protection of the

laws, protects persons from discriminatory or class legislation.

> "It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."
>
> *Missouri vs. Lewis,* 101 U. S. 22.

> "That clause (the equal protection of laws) secures equal protection to all in the enjoyment of their rights under like circumstances."
>
> *Terrace vs. Thompson,* 263 U. S. 197, 218; 68 L. ed. 255, 275.

**VII. SIMILAR LEGISLATION HELD UNCONSTITUTIONAL.**

In *People vs. Weiner,* 271 Ill. 74; L. R. A. 1916, C. p. 775, the Court considered the Illinois statute forbidding the use of secondhand cotton in the making of bed comfortables, etc. This is the only case to be found passing upon the constitutionality of regulations concerning the use of such secondhand material in manufacturing processes. The Court held that the Act was an unconstitutional deprivation of property without due process of law.

The Court says:

> "The uncontroverted testimony in the case was to the effect that sterilized secondhand material or a sterilized secondhand mattress would be safer for use than a new mattress not sterilized; that

even hospital bedding used by patients having contagious or infectious diseases is not destroyed, but is sterilized, except that in straw or excelsior mattresses the cover is sterilized and refilled with new material, because the cost of new straw or excelsior is cheaper than the cost of sterilizing the old; that sleeping upon a used mattress or being covered by a comforter or quilt, which has been used, is not dangerous to health *per se*. The proof was that the chance of coming in contact with infected bedclothing is always present in traveling and stopping at hotels, and a new mattress, if not sterilized, is liable to carry contagion; that any renovation short of sterilization fails to render a mattress or bedding free from the possibility of communicating infectious or contagious disease if the germs are present; that a bed comforter or mattress used by a normally healthy person would not be injurious if used by another person, nor be injurious to the public health; that it was the practice of hospitals and the public institutions to sterilize bedding, which rendered it safe for further use.

"Counsel for plaintiff in error contended below, and contend here, that said act is unconstitutional, violating both the state and the federal constitutions, as denying to the one punished thereunder due process of law. If the act can be sustained at all, it must be under the police power of the state. * * * The act does not attempt to prohibit the use of secondhand mattresses, but does prevent their ever again being

used in the manufacture of other mattresses which are to be sold. To prohibit absolutely the use of such material in the manufacture of mattresses for sale when not inherently dangerous, and when it may be rendered safe by reasonable regulations, is an invasion of personal and property rights within the meaning of the Federal and State constitutions. By this Act the State has deprived the citizen of the lawful use of his property in a manner not injurious or dangerous to others. It is argued by the State that laws similar to this have been passed in other jurisdictions in this country, but, so far as we are advised, the highest courts of those various states have not passed on the constitutionality of any of those acts. Indeed, the wording in most of those statutes is so very different from the wording of this statute that any ruling as to them would be of very little assistance in this case. A city ordinance very similar in some respects to this statute was held unconstitutional by the Supreme Court of Alabama in *Greensboro vs. Ehrenreich,* 80 Ala. 579; 60 Am. Rep. 130; 2 So. 725.

"The argument of counsel for the state that this act should be upheld in order to prevent fraud or deceit in the sale of goods is without merit. The provision in par. 3 of the act requiring that material used in remaking mattresses, quilts, and comforters for the person's own use must be sterilized does not violate any constitutional prohibition, and is a proper exercise of the police power. That same requirement

could be made in an act with reference to the manufacture and sale of mattresses. Regulations to prevent fraud and deceit in such manufacture and sale could be very readily provided, so as to protect the public without prohibiting the use of secondhand material if properly renovated and sterilized. The power of the legislature to protect society from disease or epidemic is very broad, but the legislature cannot arbitrarily destroy property, or any substantial interest therein, under the guise of a health regulation, or for the ostensible purpose of preventing fraud or deceit.

"Counsel for plaintiff in error further argue that there is a discrimination between the manufacturers and dealers in pillows and manufacturers and dealers in mattresses, comforters and quilts, especially after they have been used, as there is no provisions made as to pillows; that, so far as this Act is concerned, material made secondhand in the same way as the material in mattresses may again be made into pillows and sold without any regulation whatsoever. Under the decisions of this state this is class legislation.

* * * * * * * *

"The provisions of Paragraphs 1 and 2 of the act are arbitrary and unreasonable, and must be held unconstitutional and void."

In the case of *Greensboro vs. Ehrenreich,* 80 Ala. 579, the Supreme Court of Alabama had before it the question of the validity of an ordinance which provided that "it shall be unlawful for any person

to import, sell or otherwise deal in cast-off garments, blankets, bedding, or bed-clothes in said town of Greensboro: Provided, that this ordinance shall not apply to the sale of said articles not imported, and that have not been used by persons having infectious diseases." The Court said:

> "Municipal authorities, having power to abate nuisances, cannot absolutely prohibit a lawful business not necessarily a nuisance, but may abate it when so carried on as to constitute a nuisance. They cannot, under the claim of exercising the police power, substantially prohibit a lawful trade, unless it is so conducted as to be injurious or dangerous to the public health. If they can declare it unlawful to import, sell or otherwise deal in secondhand or cast-off garments, blankets, bedding and bed-clothes, without regard to the circumstances or necessity, they may, under the same power, declare it unlawful to import or sell meat because at some times and in some places, it is infected with trichina, or other kind of food, because liable to adulteration. That the ordinance is founded on the fear and apprehension of possible danger, and not on its existence, is shown by the unequal discrimination between articles imported and not imported. We cannot regard it a legitimate exercise of the power conferred by the act of incorporation."

In *State vs. Taft,* 118 N. C. 1190, 32 L. R. A. 122, the Court had before it for consideration an ordinance making it unlawful to import secondhand clothing, etc., into a town. The ordinance was held to be void. The Court held that the business was a

lawful business, not in itself necessarily a nuisance, but it might be conducted without danger to the community when properly regulated. The Court says:

> "The question presented in this case for our consideration is whether the commissioners can, under the powers given them by law, in their discretion, absolutely prohibit a lawful business, not in itself necessarily a nuisance, but which may be conducted without danger to the community, when properly regulated. The sale of secondhand clothing is not a nuisance *per se,* but is, on the other hand, a lawful business and, under proper regulations, may be so conducted as to be without danger to the health of the community, and at the same time to be of great benefit to a large portion of the people. There is nothing dangerous to health in articles of secondhand clothing, of themselves. They can only become noxious by reason of prior use—of having been worn or possessed by persons themselves infected or living in infected communities. The town authorities would have the right to compel fumigation and disinfection of secondhand clothing. They might require proper assurances, before such articles were imported or offered for sale, that they have not been bought in or brought from markets or places where epidemics of contagious or infectious diseases were or had been recently prevailing, or they might prohibit the further sale of such stocks from which articles had been sold and had communicated disease. In the case of *Greensboro vs. Ehrenreich,* 80 Ala. 579, 60 Am. Rep. 130, the ordinance was not as

prohibitory as the one before us, and the court there, in passing upon its validity, said: 'Municipal authorities, having power to abate nuisances, cannot absolutely prohibit a lawful business not necessarily a nuisance, but may abate it when so carried on as to constitute a nuisance. They cannot under the claim of exercising the police power, substantially prohibit a lawful trade, unless it is so conducted as to be injurious or dangerous to the public health. If they can declare it unlawful to import, sell or otherwise deal in secondhand or cast-off garments, blankets, bedding and bed-clothes, without regard to the circumstances or necessity, they may, under the same power, declare it unlawful to import or sell meat because at some times and in some places it is infected with trichina.' The same principle is also decided in *Weil vs. Ricord,* 24 N. J. Eq. 169. We are of the opinion that the commissioners transcended their powers in the passing of this ordinance; that it is unreasonable, in that it is prohibitory of a business lawful in itself, and that it is void."

In *Koscinsko vs. Slomberg,* 68 Miss. 469, the Court considered a municipal ordinance similar to that in the *Greensboro vs. Ehrenreich* case. The ordinance prohibited secondhand clothing from being brought into or offered for sale within a town without first proving that it was clean and that it did not come from a place where contagion or infection is or had been prevailing. The Court held the ordinance to be unreasonable and void.

**VIII. THE PROHIBITION OF AN ARTICLE IS UNCONSTITUTIONAL IF REGULATION WILL ACCOMPLISH THE INTENDED PURPOSE.**

A State, in the exercise of its police power, cannot absolutely prohibit the use of a commercial commodity when by proper regulatory provisions it may be rendered harmless to health.

It is said in the case of *People vs. Weiner*, 271 Ill. at page 80:

> "The act does not attempt to prohibit the use of secondhand mattresses but does prevent their ever again being used in the manufacture of other mattresses which are to be sold. To prohibit absolutely the use of such material in the manufacture of mattresses for sale when not inherently dangerous and when it may be rendered safe by reasonable regulation is an invasion of personal and property rights within the meaning of the Federal and State constitutions. By this act the State has deprived the citizen of the lawful use of his property in a manner not injurious or dangerous to others."

It was said in *Hannibal & St. Joseph R. R. Co. vs. Husen*, 95 U. S. 465:

> "Many acts of a State may, indeed, affect commerce, without amounting to a regulation of it, in the constitutional sense of the term. And it is sometimes difficult to define the distinction between that which merely affects or influences and

that which regulates or furnishes a rule for conduct. There is no such difficulty in the present case. While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce."

It was said in *Greensboro vs. Ehrenreich,* 80 Ala. at page 582:

"The general statutes provide quarantine as the means to prevent the introduction of infectious or contagious diseases. To this end, any town or city may establish a quarantine ground; the corporate authorities may, from time to time, prescribe the quarantine to be observed by all vessels arriving within the harbor or vicinity; may extend such regulations to all persons, goods, and effects in such vessels; and may compel any person coming into town, by land, from a place infected with a contagious disease, to perform quarantine, and be restrained from traveling until discharged.—Code of 1876, secs. 1507-1512. The policy of the statutory provisions is the regulation

of trade and travel by temporary restraint, not extending beyond the occasion and scope of the necessity—self-defensive, which is the limitation on the police power of the State imposed by the Federal Constitution.—*Railroad vs. Husen,* 95 U. S. 465."

See *State vs. Taft,* 118 N. C. 1190, at page 1192, *supra,* the passage which we have quoted on page 25 *et seq.*, of this brief.

In the case of *Valley Railways vs. Harrisburg,* 280 Pa. 385, 396; 124 Atl. 644, 648, the Court says:

"True, in accepting the franchise ordinance the company agreed to 'subject itself to all regulations of the city now in force or hereafter made', but that must be construed reasonable regulations. What the 1923 ordinance attempts is not regulation but prohibition; for, as we have stated, its effect is to exclude appellant from Second Street, under conditions as they now are and have been for thirty years. A statute or ordinance to be valid under the police power must be reasonable: *York Water Company vs. York,* 250 Pa. 115, 119; and see *Mahoning & Shenango Ry. & Light Co. vs. New Castle,* 233 Pa. 413; *Pennsylvania R. R. Co.'s Case,* 213 Pa. 373. Regulation is not to be carried to the extent of prohibition: *Jitney Bus Assn. vs. Wilkes-Barre,* 256 Pa. 462. The power to regulate is not a power to destroy. A limitation is not the equivalent of confiscation: *Railroad Commission Cases,* 116 U. S. 307, 331; *Freund Police Power,* section 63."

The case of *City of St. Louis vs. Evraiff* (Supreme Court of Missouri, 1923), 256 S. W. 489, involved the provisions of a zoning ordinance which prohibited the use of property in industrial districts for the storage of scrap, rags, junk, etc. The Court, in holding the prohibitory provisions invalid, said at p. 494:

> "It is clear that the exercise of the police power in reference to private occupation is limited to such regulations as may be reasonably necessary for the protection of the peace, health, and comfort of society."

The case of *Booth vs. Illinois,* 184 U. S. 424; 46 L. ed. 623, involved a statute prohibiting against options to buy or sell grain futures. The Court said:

> "If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the state thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law".

In the case of *Marymont vs. Nevada State Banking Board,* 33 Nev. 333; 111 Pac. 295; 32 L. N. S. 477, the Court quotes with approval *Tiedeman on Police Power,* p. 301, as follows:

"It has also been maintained, and I think satisfactorily established, that no trade can be prohibited altogether, unless the evil is inherent in the character of the trade, so that the trade, however conducted, and whatever may be the character of the person engaged in it, must necessarily produce injury upon the public or upon individual third persons".

We are not forgetting in this connection the decisions of the Court as to the right of a State to prohibit absolutely the sale of certain commodities within its borders, even if those commodities have been sold commercially for years and are recognized in the market. We have in mind the Oleomargarine Cases: *Powell vs. Pennsylvania,* 127 U. S. 678; the Liquor Cases: *Crane vs. Campbell,* 245 U. S. 304; and the Boric Acid Case: *Price vs. Illinois,* 238 U. S. 446; but there is in these cases no doubt as to what was the intention of the State. There is no need of a definition of oleomargarine, or intoxicating liquor, or boric acid; nor can the character of any of these commodities be changed by sterilization or disinfection; they are always the same and remain so under all ordinary conditions. Under the definition of this statute, it surely prohibits some things which are known in the trade as "shoddy," which the Legislature could not have intended to prohibit except by the most unreasonable and arbitrary exercise of its police powers.

## IX. THE APPLICATION OF THE LAW TO THE TESTIMONY.

Viewing all the testimony in the light of the law applicable to the case, it first appears that the statute resorts to the drastic extreme of prohibiting shoddy, for the ostensible purpose of protecting health, instead of resorting to regulation. There are in our whole body of law few prohibitions, and these may be justified on the ground of a universal conviction of public danger, and the necessity of absolute prohibition as the only safeguard. In this statute there is no legislative "determination" or "finding" that shoddy is so detrimental to health that its use must be forbidden. There is no preamble or declaration of its danger, and no explanation of the complete prohibition. The appellant has not attempted to contradict the appellee's testimony concerning the nature of shoddy, except in a general way, by the broad testimony of Dr. Joachim and Mr. Bright. This was to the effect that shoddy sometimes was made of filthy rags and that it contained dust. There is no proof of a single case of disease traceable to the use of shoddy, and no denial of the appellee's testimony of the remote possibility of disease from shoddy. Dust in itself is not dangerous (Record, p. 118). The appellant appears to rely on the argument that the legislative discretion in police power matters should not be lightly disturbed by the courts. But in this statute the Legislature has *prohibited* when it might have accomplished its legislative purpose perfectly by *regulating*. At one sweep it wipes out a great trade in a commodity of everyday use which is de-

manded by the needs of the community. Without distinction it wipes out the dainty coverlet made of pure French wool, together with the cheapest grades of old shoddy comfortable. If any of the things excluded by a prohibition are unquestionably safe for public health, then the prohibition is arbitrary. The coverlet filling was made from wool clippings of the highest grade of underwear changed into *what the Act calls* shoddy. The statute bars the filling as shoddy, although no one could say that the intermediate process of shoddying made it more dangerous to use than the original fabric. This is unreasonable. This legislative prohibition is a perfect example of a law based either on misunderstanding of the broad application of a definition, or else on lack of knowledge of a great industry. The Court should look behind the opprobrious implication of the word "shoddy" acquired by historic accident in the commercial cheating of the Civil War, and view as a whole the great industry in reclaimed wool and cotton fibre. Viewed in this way, prohibition is absurd. It becomes particularly absurd when it appears that the perfect protection of health can be accomplished by cheap and commercially practicable sterilization.

Considering the testimony now from the point of view of the "equal protection clause" of the Constitution, gross discrimination appears (1) in the fact that while the Act prohibits shoddy altogether, it permits secondhand materials and new and secondhand feathers, if sterilized; and (2) in the fact that it prohibits shoddy in the making of comfortables, mattresses, etc., but permits shoddy in another article

of bedding of identical use, the blanket, and also permits its use in any other way.

The testimony shows that virgin wool in the grease, which is sometimes spun and woven into cloth, often contains the very dangerous spores of anthrax. The Act permits the use of virgin wool as filling for comfortables and mattresses. Virgin wool might well be unwashed dung-locks or the blood-matted refuse of the abattoir. The Act permits cotton linters, which are a by-product of the manufacture of cottonseed oil. The cotton seeds are shoveled about by barefooted negroes and are stored and shipped like coal. The sweepings of the cotton mill and the wool storehouse may be used with impunity, for they are new. Hair from China, jute from India, moss from the swamp, and straw from the livery stable may be used, but shoddy from perfectly new and unused fabrics is barred. Under the Act, it is proper to take the stained stuffing of an old mattress, sterilize it and make a new mattress out of it. It is a misdemeanor, however, to use filling made from new underwear clips. Under the Act, it is proper to stuff an old coat whole into a mattress, if it is sterilized. If the same coat is ground up into a fluffy mass, so as to be better used as a filler, it is barred.

The Act permits the use of the same mattresses and blankets by different persons night after night in hotels and Pullman cars. It permits hospitals to use the same bedding over and over again for one diseased patient after another. The mattresses from the pest-house are remade and renovated legally

under the Act with sterilization. Shoddy, however, is prohibited.

The Act permits shoddy in blankets, which come into immediate contact with the body. It prohibits shoddy in comfortables, which encase the shoddy in a cover of new fabric. Failure to extend the Act to shoddy in trades so closely allied to comfortable manufacture as not to admit of any difference from the point of view of public welfare, is a discrimination which is palpably unreasonable and therefore unconstitutional. It was so decided in the case of *People vs. Weiner,* 271 Ill. at page 81:

> "Counsel for plaintiff in error further argue that there is a discrimination between the manufacturers and dealers in pillows and manufacturers and dealers in mattresses, comforters and quilts, especially after they have been used, as there is no provision made as to pillows; that, so far as this act is concerned, material made secondhand in the same way as the material in mattresses may again be made into pillows and sold without any regulation whatever. Under the decisions of this state, this is class legislation."

## X. THE POWELL CASE.

Under the heading of "A Ruling Case," on page 30 of his brief, the appellant devotes some discussion to the case of *Powell vs. Commonwealth,* 127 U. S. 678. We call attention to Judge Schoonmaker's reference to this case, on page 156 of the Record:

> "In connection with our opinion on this branch of this case, we may say that we are not unmindful of the decisions of the Supreme Court which have sustained absolutely the state statutes which prohibit the sale of certain commodities among which may be noted: the oleomargarine cases: *Powell vs. Penna.,* 127 U. S. 678; the liquor case: *Crane vs. Campbell,* 245 U. S. 304; and the boric acid case: *Price vs. Illinois,* 238 U. S. 446. In those cases there was no possibility of the character of the commodities in question being changed by sterilization so as to render them harmless. Those cases there are not parallel with the instant case, where all possible harmful qualities of shoddy may be removed by sterilization."

Oleomargarine might readily be mistaken for butter and so with food stuffs containing boric acid. They might be mistaken for unadulterated food stuffs, and skimmed condensed milk might easily be mistaken for condensed milk containing butter fat. Shoddy resembles no other material. It is always shoddy and can be distinguished as such. The claim of the State is that shoddy made from old materials cannot be distinguished from shoddy made from new. This

would no more warrant the suppression of new shoddy than would the resemblance of oleomargine to butter warrant the prohibition of butter. The fact is that inspection of shoddy may be made to determine whether it is old or new or whether clean or unclean in exactly the same way as milk and food stuffs are inspected at present. The only way that inspection can be made is by sample and analysis. It is enough for health purposes and to prevent fraud that the safety of the material may be determined in the ordinary known ways just as milk and food stuffs are inspected. The safety of none of these can be told by view but only by analysis. It would be an unfair test to require more of shoddy.

## XI. THE EFFECT OF THE DECISION ON THE WHOLE ACT.

The appellant says, on page 26 of his brief:

"It is apparent, however, that even were the Court right in its findings that the classification is arbitrary, the conclusion reached by the Court is fatally defective. The conclusion of the Court is that the only provision of the Act which violates the 14th Amendment is the provision which absolutely prohibits the use of shoddy in the articles covered by the Act. Yet every provision of the Act is based upon the same classification and therefore if the classification is arbitrary the equal protection of the laws clause of the 14th Amendment is violated by the entire Act, and the entire Act must fall."

The suggestion of counsel for appellant, that under the decision the whole Act should fall, is quite right. The Trial Judge, however, did not care to strike down the whole Act unless it was imperative. The appellee logically might complain because the Court did not strike down the whole Act, because it felt that some of the provisions as to tagging regulation, etc. were unreasonable; but these questions could not be raised under Judge Schoonmaker's decision unless the appellee appealed.

Again, the counsel for appellant says, on page 29 of his brief:

> "If we correctly interpret the view of the Court below on this point, the revision of the Act to meet its objections would still leave us with an unconstitutional statute, because of the absence of a requirement that new material be sterilized, and owing further to the fact that it is absolutely necessary to regulate the use of feathers as a filling for bedding in a different way than some other materials are regulated. We respectfully submit that the fallacy of this feature of the Court's opinion is apparent."

Why should he complain? This decision does not interfere in any way with the regulations provided by the Act. The Court has indicated that the only fault that it finds with this Act is the prohibition of shoddy. It is easy enough for the Commonwealth to provide for regulation as to shoddy if it wishes.

## XII. CONCLUSION.

We believe that under the evidence in this case and the decisions which are applicable, some of which we have cited, we may safely reach these conclusions:

The right of Palmer Brothers Company to do business in Pennsylvania is protected by the Fourteenth Amendment to the Constitution of the United States.

The legislature of Pennsylvania may not enact a statute which, in its relation to its own citizens or the citizens of another State, is an unreasonable and arbitrary exercise of the police power.

The judgment of the legislature is conclusive as to the harmful character of something prohibited, if it is conceded to be harmful, or if it is debatable whether it is harmful or not. The courts may declare a statute invalid which prohibits an article which is not harmful or may be rendered harmless by proper treatment.

Shoddy in itself is not harmful as a filling for comfortables. It may be effectively sterilized and rendered absolutely safe by practicable commercial processes.

The prohibition of the use of shoddy in comfortables and the permission of its use in blankets and clothing is class legislation and invalid. The prohibition against shoddy, in view of the permitted use of

sterilized secondhand materials, is a gross discrimination.

If we are right in these conclusions the decree should be affirmed and the appeal dismissed.

Respectfully submitted,

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Shoddy

# SUPREME COURT OF THE UNITED STATES.

No. 510.—October Term, 1925.

D. E. Weaver, Chief of the Bureau of Inspection, Department of Labor and Industry of Pennsylvania, Appellant,
*vs.*
The Palmer Brothers Company.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

[March 8, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

Appellee is a Connecticut corporation, and for more than 50 years it and its founders have manufactured comfortables in that State, and have sold them there and in other States. An Act of the legislature of Pennsylvania, approved June 14, 1923, regulates the manufacture, sterilization and sale of bedding. Section 1 of the Act prescribes the following definitions: "Mattress" means any quilted pad, mattress, mattress pad, mattress protector, bunk quilt or box spring, stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, kapok, or other soft material. "Pillow", "bolster", or "feather bed" means any bag, case, or covering made of cotton or other textile material, and stuffed or filled with any filler mentioned in the definition of mattress, or with feathers or feather down. The word "comfortable" means any cover, quilt, or quilted article made of cotton or other textile material, and stuffed or filled with fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material. "Cushion" means any bag or case made of leather, cotton, or other textile material, and stuffed or filled with any filler, except jute and straw, mentioned in the definition of "pillow," or with tow. The word "new" as used in the Act means any material or article which has not been previously manufactured or used for any purpose. "Secondhand" means any material or article of which prior use has been made.

"Shoddy" means any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up.

Section 2 provides: "No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture: (a) Any material known as 'shoddy', or any fabric or material from which 'shoddy' is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry; (c) any new or secondhand feathers, unless such new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry." Punishment by fine or imprisonment is prescribed for every violation of the Act, and each sale is declared to be a separate offense.

The Act took effect January 1, 1924. Appellant is charged with its enforcement, and threatened to proceed against the appellee and its customers. January 29, 1924, appellee brought this suit to enjoin the enforcement of the Act on the grounds, among others, that, as applied to the business of appellee, it is repugnant to the due process and equal protection clauses of the Fourteenth Amendment. An application under § 266 of the Judicial Code for a temporary injunction was denied. The decree was affirmed by this court. 266 U. S. 588. Later defendant answered, and there was a trial at which much evidence was introduced. The District Court found that the statute infringes appellee's constitutional rights insofar as it absolutely prohibits the use of shoddy in the manufacture of comfortables; and to that extent the decree restrains its enforcement. This appeal is under § 238 of the Judicial Code.

The question for decision is whether the provision purporting absolutely to forbid the use of shoddy in comfortables violates the due process clause or the equal protection clause. The answer depends on the facts of the case. Legislative determinations express or implied are entitled to great weight; but it is always open to interested parties to show that the legislature has transgressed the limits of its power. *Penna. Coal Co.* vs. *Mahon*, 260 U. S. 393, 413. Invalidity may be shown by things which will be judicially noticed (*Quong Wing* v. *Kirkendall*, 223 U. S. 59, 64), or by facts

stablished by evidence. The burden is on the attacking party to stablish the invalidating facts. See *Minnesota Rate Cases,* 230 J. S. 352, 452.

For many years prior to the passage of the Act comfortables nade in appellee's factories had been sold in Pennsylvania. In 1923, its business in that State exceeded $558,000 of which more han $188,000 was for comfortables filled with shoddy. About 5000 dozens of these were filled with shoddy made of new materials, and about 3000 dozens with secondhand shoddy. Appellee makes approximately 3,000,000 comfortables annually, and about 750,000 of these are filled with materials defined by the Act as shoddy. New material from which appellee makes shoddy consists of clippings and pieces of new cloth obtained from cutting tables in garment factories; secondhand shoddy is made of secondhand garments, rags, and the like. The record shows that annually many million pounds of fabric, new and secondhand, are made into shoddy. It is used for many purposes. It is rewoven into fabric; made into pads to be used as filling material for bedding; and is used in the manufacture of blankets, clothing, underwear, hosiery, gloves, sweaters and other garments. The evidence is to the effect that practically all the woolen cloth woven in this country contains some shoddy. That used to make comfortables is a different grade from that used in the textile industry. Some used by appellee for that purpose is made of clippings from new woolen underwear and other high grade and expensive materials. Comfortables made of secondhand shoddy sell at lower prices than those filled with other materials.

Appellant claims that, in order properly to protect health, bedding material should be sterilized. The record shows that, for the sterilization of secondhand materials from which it makes shoddy, appellee uses effective steam sterilizers. There is no controversy between the parties as to whether shoddy may be rendered harmless by disinfection or sterilization. While it is sometimes made from filthy rags, and from other materials that have been exposed to infection, it stands undisputed that all dangers to health may be eliminated by appropriate treatment at low cost. In the course of its decision the District Court said, "It is conceded by all parties that shoddy may be rendered perfectly harmless by sterilization." The Act itself impliedly determines that proper sterili-

zation is practicable and effective. It permits the use of secondhand materials and new and secondhand feathers when sterilized, and it regulates processes for such sterilization.

There was no evidence that any sickness or disease was ever caused by the use of shoddy. And the record contains persuasive evidence, and by citation discloses the opinions of scientists eminent in fields related to public health that the transmission of disease-producing bacteria is almost entirely by immediate contact with, or close proximity to, infected persons; that such bacteria perish rapidly when separated from human or animal organisms; and that there is no probability that such bacteria or vermin likely to carry them survive after the period usually required for the gathering of the materials, the production of shoddy, and the manufacture and the shipping of comfortables. This evidence tends strongly to show that in the absence of sterilization or disinfection there would be little, if any, danger to the health of the users of comfortables filled with shoddy, new or secondhand; and confirms the conclusion that all danger from the use of shoddy may be eliminated by sterilization.

The State has wide discretion in selecting things for regulation. We need not consider whether the mere failure to forbid the use of other filling materials that are mentioned in the Act is sufficient in itself to invalidate the provision prohibiting the use of shoddy, as a violation of the equal protection clause. But the number and character of the things permitted to be used in such manufacture properly may be taken into account in deciding whether the prohibition of shoddy is a reasonable and valid regulation or is arbitrary and violative of the due process clause. Shoddy-filled comfortables made by appellee are useful articles for which there is much demand. And it is a matter of public concern that the production and sale of things necessary or convenient for use should not be forbidden. They are to be distinguished from things that the State is deemed to have power to suppress as inherently dangerous.

Many States have enacted laws to regulate bedding for the protection of health. Legislation in Illinois (Laws of 1915, p. 375), went beyond mere regulation and prohibited the sale of secondhand quilts or comfortables even when sterilized or when remade from sterilized secondhand materials. In *People* v. *Weiner,* 271

Ill. 74, the state Supreme Court held that to prohibit the use of material not inherently dangerous and that might be rendered safe by reasonable regulation transgresses the constitutional protection of personal and property rights.

The appellant insists that this case is ruled by *Powell* v. *Pennsylvania,* 127 U. S. 678. But the cases are essentially different. A law of Pennsylvania prohibited the manufacture, sale, or possession for sale, of oleomargarine. An indictment against Powell charged a sale and possession with intent to sell. At the trial he admitted the allegations and, for his defense, offered to prove certain facts which were excluded as immaterial. The question for decision was whether these facts were sufficient to show that, as applied, the law was invalid. Mr. Justice Harlan, speaking for the Court said (p. 682) that the purpose of these offers of proof was to "show that the article sold was a new invention, not an adulteration of dairy products, nor injurious to the public health, but wholesome and nutritious as an article of food . . . [p. 684.] It will be observed that the offer in the court below was to show by proof that the particular articles the defendant sold, and those in his possession for sale, in violation of the statute, were, in fact, wholesome or nutritious articles of food. It is entirely consistent with that offer that many, indeed, that most kinds of oleomargarine butter in the market contain ingredients that are or may become injurious to health. The court cannot say, from anything of which it may take judicial cognizance, that such is not the fact. Under the circumstances disclosed in the record, and in obedience to settled rules of constitutional construction, it must be assumed that such is the fact." And see *Powell* v. *Commonwealth,* 114 Pa. St. 265, 279, 295.

"Laws frequently are enforced which the court recognizes as possibly or probably invalid if attacked by a different interest or in a different way." *Quong Wing* v. *Kirkendall, supra,* 64. This is well illustrated by the *Powell* case compared with *Schollenberger* v. *Pennsylvania,* 171 U. S. 1. Every opinion is to be read having regard to the facts of the case and the question actually decided. *Cohens* v. *Virginia,* 6 Wheat, 264, 399. The facts clearly distinguish this case from the *Powell* case. There, it was assumed that most kinds of oleomargarine in the market were or might become injurious to health. Here, it is established that sterilization eliminates the dangers, if any, from the use of shoddy. As

against that fact, the provision in question cannot be sustained as a measure to protect health. And the fact that the Act permits the use of numerous materials, prescribing sterilization if they are secondhand, also serves to show that the prohibition of the use of shoddy, new or old, even when sterilized, is unreasonable and arbitrary.

Nor can such prohibition be sustained as a measure to prevent deception. In order to ascertain whether the materials used and the finished articles conform to its requirements, the Act expressly provides for inspection of the places where such articles are made, sold or kept for sale. Every article of bedding is required to bear a tag showing the materials used for filling and giving the names and addresses of makers and vendors, and bearing the word "secondhand" where there has been prior use, and giving the number of the permit for sterilizing and disinfecting where secondhand materials or feathers are used for filling. Obviously, these regulations or others that are adequate may be effectively applied to shoddy-filled articles.

The constitutional guaranties may not be made to yield to mere convenience. *Schlesinger* v. *Wisconsin*, decided March 1, 1926, — U. S. —. The business here involved is legitimate and useful; and, while it is subject to all reasonable regulation, the absolute prohibition of the use of shoddy in the manufacture of comfortables is purely arbitrary and violates the due process clause of the Fourteenth Amendment. *Adams* v. *Tanner*, 244 U. S. 590, 596; *Meyer* v. *Nebraska*, 262 U. S. 390; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504.

*Decree affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*

# SUPREME COURT OF THE UNITED STATES.

No. 510.—October Term, 1925.

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| D. E. Weaver, Chief of the Bureau of Inspection, etc., Appellant, *vs.* The Palmer Brothers Company. | Appeal from the District Court of the United States for the Western District of Pennsylvania. |

[March 8, 1926.]

Mr. Justice Holmes, dissenting.

If the Legislature of Pennsylvania was of opinion that disease is likely to be spread by the use of unsterilized shoddy in comfortables I do not suppose that this Court would pronounce the opinion so manifestly absurd that it could not be acted upon. If we should not, then I think that we ought to assume the opinion to be right for the purpose of testing the law. The Legislature may have been of opinion further that the actual practice of filling comfortables with unsterilized shoddy gathered from filthy floors was wide spread, and this again we must assume to be true. It is admitted to be impossible to distinguish the innocent from the infected product in any practicable way, when it is made up into the comfortables. On these premises, if the Legislature regarded the danger as very great and inspection and tagging as inadequate remedies, it seems to me that in order to prevent the spread of disease it constitutionally could forbid any use of shoddy for bedding and upholstery. Notwithstanding the broad statement in *Schlesinger* v. *Wisconsin* the other day, I do not suppose that it was intended to overrule *Purity Extract & Tonic Co.* v. *Lynch*, 226 U. S. 192, and the other cases to which I referred there.

It is said that there was unjustifiable discrimination. A classification is not to be pronounced arbitrary because it goes on practical grounds and attacks only those objects that exhibit or foster an evil on a large scale. It is not required to be mathematically precise and to embrace every case that theoretically is capable of

doing the same harm. "If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." *Miller* v. *Wilson*, 236 U. S. 373, 384. In this case, as in *Schlesinger* v. *Wisconsin*, I think that we are pressing the Fourteenth Amendment too far.

Mr. Justice BRANDEIS and Mr. Justice STONE concur in this opinion.